

# DISCOURSE

## CONCERNING

Some of the most important Branches,  
and Parts, of the *Office of the Justices  
of the Peace*; and of the Difficultys  
occurring to Them, in the Execution,  
and Administration of that Office, com-  
prehending therein, some Proposals for  
the removing those Difficultys.

To which are adjoined,

OBSERVATIONS on the LAWS concerning  
the *Highways*, Occasioned partly by  
Mr. *Shapleigh's* Treatise thereon.

with

## PROPOSALS

For their better Reparation and  
Amendment.

---

Dis proximus ille est,  
Quem ratio, non ira movet; qui facta rependens  
Consilio punire potest. Claudian.

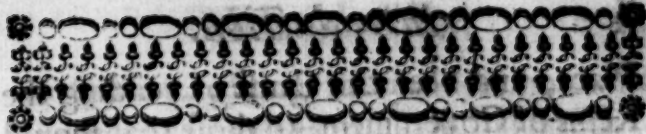
---

S.  
OK  
997.7  
DIS

72  
03223

APR 13 1911





## T H E

# INTRODUCTION.

**T**H E Office of a Justice of the Peace, well, and faithfully executed, without Fear or Favour, or any Bias or Tendency to Popularity, Parish, Election, or Self Interest; is an Office of the highest Concernment and Moment to the Wellfare of the Kingdom, conveying the Sanative Virtues and Influences of the Law, to the Doors of the People.

AND as this Office (honestly and diligently executed) is extremely beneficial to the Publick, so on the other Hand, when partially, and unjustly, more especially if exercis'd with Tyranny, Violence, and Oppression; it is then of the most pernicious, and dreadful Consequence.

BUT this last is not often the Case, on the contrary, I fear that too much Lenity, and a tempering and allaying of Justice with too much Mercy, has taken

Place, and been the Cause of yeilding the Reins of Government, to those that should be governed; so that the People, now have thrown their Riders, and run loose and wild without Restraint, and it must be a stiff and strong Hand to reclaim and reduce them to Order and Discipline.

SINCE Justices of the Peace, are by their Commission, both authorized and required to put in Execution, not only the Powers the antient conservators of the Peace were vested with, but also those contained in their Commission, and such as are cast upon them by many Acts of Parliament, especially those of later Years, when Sessions have been constantly every Year held, and in which, scarce any hath past wherein there is not more and more Employment still heaped upon the Justices; their whole Time must necessarily be spent in this Occupation and Business if followed as the Laws require: and that which perplexes their Thoughts, and renders their Employment more weighty, is, that many of these Acts, have recieved Additions or Variations, and thereby are so intricated that the Law concerning this Office, is become a Science of itself.

How numerous are the Laws of the  
α *Customs and Excise?* particularly the latter, which swell out into several Volumes  
of

of Octavo, giving the Justices boundless Authoritys, such as would forbid any good natured Man executing them, were it not for the Power with which the Justices are intrusted, of mitigating the Forfeitures, and that the Time of Prosecution is limited. And yet notwithstanding the Justices are intrusted with the Execution of these unlimited Powers, and with others in other Cases, by which (if they were Arbitrary) they could tyrannize over the People, and send Ruin and Destruction to many Persons and Families; yet are they not as the Law stands, allowed summarily to convict and punish a disorderly Ale House Keeper, a Gamester, a putative Father of a Bastard, a common Poacher, or Drunkard, &c. &c. If the Offence is committed in their own Parish where it is most likely to be brought in Judgement before them; and the Reason given for this, is, that part of the Forfeitures arising from these Convictions, is given to the Poor, and that the Justices living in the Parish, and rated to the Poor, are therefore interested Persons, and cannot be (though upon their Oaths) equal Judges in these Cases; when after all, it is most likely, that the Ease they could obtain by forswearing themselves, would be but a Trifle; and yet again in some other Cases, Rewards are Assigned them  
for

for encouraging and engaging them to proceed to convict Offenders.

BUT since it is the Law, (some particular Cases in late Acts of Parliament *excepted*) it remains only to wish that a new Law was made, giving them a general Liberty to act in their own Parishes, so as the particular *Rate* assessed upon them, towards the Relief of the Poor, did not exceed a certain Proportion; such suppose as a Fiftieth Part of the *Rate*, or so as the *Sum forfeited* to the Poor, did not exceed five Pounds.

ANOTHER Difficulty arises to the Justices from the number and variety of Appeals from their Acts, which they should ever be very wary of; and yet if there were more of them under proper Regulations, I should like it: for I am not fond of Power, the natural Father of Envy.

BUT my Meaning is, that in many Cases where an Appeal is given, a Warrant of Distress is notwithstanding immediately necessary, and if this Process is suspended by an Appeal 'till the next Quarter Sessions, the Effect of the Prosecution may be lost, and the Party with his Goods, gone.

To remedy this, a Clause in an Act of Parliament might be hoped for, to allow  
Liberty



Liberty to the Justice, immediately after Conviction, to issue his Warrant of Distress, and to seize a competent part of the Goods of the convicted Person; to remain however in the Hands of the Constable, for ten or twelve Days, and if in that Time, the Party grieved should not lodge (and give Notice to the Prosecutor and Justice of) his Appeal, and enter into a Recognizance to prosecute it with Effect, or pay the condemnation Money and Charges, that then the Goods distrained, should be inventoried, appraised and sold, to answer the Forfeiture; rendring the Overplus (after Charges deducted) to the Owner; otherwise to be redelivered, if the Appeal is allowed. And this generally speaking, is the Method prescribed in the *Excise Laws*.

FROM what has been said, it is obvious that in the Execution of the numberless and extensive Powers vested in the Justices of the Peace, that it will sometimes fall out that their Orders, Precepts, or Warrants, (particularly for Distresses and Commitments) have not been so correct, nor so cautiously and critically guarded against Errors, but that for some Defects or involuntary Slips or Mistakes, they would be, and have been accordingly set aside, quash'd, and discharged by the superiour Courts



Courts: though to the great Honour of these Courts, they have done what they could, consistently with the Law, to support the Acts of the Justices. But yet it must be owned after all, that it is no easy Task to form these Processes intirely free from all Errors; the Lawyers themselves, having sometimes fallen under the same Rebuke with the other Justices: and when any of these things happen, the Justice cannot be without his Concern, not only with respect to himself, but also with respect to the Suitor, who is hereby disappointed of the Effect of his Suit.

How valuable would any Gentleman learned in the Law be, that would vouchsafe to furnish the Justices with a Set of regular and authentick Warrants and processes, for their Accommodation and eventually for the good of the Publick?

I must however allow, that there is a great Abatement of the Trouble of the Justices, occasioned by a most inveterate and unmoveable hatred and aversion in the People, against *Informers*; and this is so diffused and general, that at this Time, there are none (except the Officers of the Crown) but what are infected with it, in so much that when the Parliament has provided Remedies against reigning Crimes, and armed the Justices with  
Powers

Powers and Penaltys (if exercis'd) sufficient to suppress them; These for the present, convey some Terror with them; but in six Months Time, they sink into Oblivion, and the Penaltys are Phantoms that vanish, and the Law is lifeless and dead. Sad Ease to the Justices, that brings with it Destruction to the Constitution! but whether this Infection can be stopt or subdued by the Art of Man, is a Problem too difficult for me to solve; and therefore I must leave off this, and other intractable or unconquerable Difficulties, to treat in the following Discourse, on such as admit of a Cure.

Powers and Privileges (if possible) left  
 ancient to posterity; there for the  
 present, convey some of our will them;  
 but in six months I am they sink into  
 Oblivion, and the Powers are left to  
 that vanish, and the Law is left to  
 dead. And I am to the Justice that brings  
 with it a distinction to the Constitution;  
 but whether this distinction can be kept or  
 subdued by the Art of Man, is a prob-  
 lem too difficult for me to solve; and  
 therefore I shall leave of this and other  
 subjects of unaccountable Difficulties,  
 to treat in the following Discourse, on  
 such as admit of a Cure.

[ I ]

---

A

# DISCOURSE

ON some of the most important Parts of  
the Office of a  
JUSTICE of the PEACE.

**T**HE principal Difficultys that encounter the Justices of the Peace in the Execution of their Offices, (and unto which this Discourse is confined) are such as arise in Cases of high Consequence and Importance to the Publick, and therefore merit their attention, and call for the relieving Hand of Parliament; and these relate to the ASSIZE of BREAD, ALE HOUSES, VAGABONDS, *Highways* and Prosecutions thereon; BRIDGES, WAGGONS and CARRIAGES, and the Charges of prosecuting FELONS.

AND let us as we are showing the Difficultys that intervene in these special Cases, see whether there may not be some Remedies or Provisions thought of, for the easing or removing them.



## 2 The ASSIZE of BREAD.

AND that which naturally demands a Precedence in our Thoughts, as it highly concerns the succouring the Miseries of the Poor, is,

### The ASSIZE of BREAD.

THE bare stating of the Laws on this Subject, with a fruitless Attempt to put them in Execution, is sufficient (I hope) to move Gentlemen by a practicable Law, to help the Poor in this necessary Article.

BUT alas! though *English* Men are naturally Charitable and Compassionate, yet generally speaking, they had rather give their Money, than be at any Trouble, or spend their Thoughts how to remedy the Evils complained of, or encounter the Frauds and Conspiracies of wicked and deceitful Men; not considering that the Money they thus give in Charity, serves more to sooth, than to cure the Malady.

THE principal Acts that telate to the ASSIZE of BREAD, are the 8th. of *Ann.* C. 18. the 1st. of *Geo.* C. 25. the 3d. of *Geo.* 2d. C. 29. and the 22d. *Geo.* 2d. C. 46. all which are made for the regulating the ASSIZE of BREAD.

IN that of Queen *Ann.*, there is a Table made for ascertaining the Weight of Penny, two Penny, six Penny, twelve Penny, and eighteen Penny Loaves, according



ording as the Price of Corn at Market;  
is more or less.

By this Act, Power is given to the May-  
'ors, Bailiffs, Aldermen, or other chief  
'Magistrates for the Time being; of any  
'City, Town Corporate, or Borough, or  
'two or more Justices of the Peace, in  
'such Towns and Places where there shall  
'be no such Mayors, Bailiffs, Aldermen,  
'or cheif Magistrate, to make Rules and  
'Orders for regulating the Mystery of  
'Baking, and the Sorts, Assize, Price and  
'Weight of Bread; and the Bakers are  
'not to sell any other Sort but *White*,  
'*Wheaten* and *Houshold*, and such others  
'as should be licensed by the Justices or  
'Magistrates.

BUT the Penalty given by this Act with  
respect to the Bakers not *marking* their  
BREAD, is by the 1 of Geo. C. 25. re-  
pealed; and that which relates to the  
want of Weight, is changed from one in-  
tire Sum of *forty Shillings*, to *five Shil-  
lings an Ounce*.

BUT by the 22d. of Geo. 2d. C. 46. the  
*marking* the BREAD is again set up, and  
the manner of doing it enjoined, but with  
a different Penalty to that of the 8. 2. A.

AND by the 1st. of Geo. it is made  
'lawful for Bakers to sell Pecks, half  
'Pecks, Quarterns and half Quartern  
Loaves

‘Loaves, so as the same be both as to  
 ‘Weight and Price, in proportion to the  
 ‘Assize Table in the Act of *Queen Ann.*

AND by the 3d. of *Geo. 2d* it is enact-  
 ‘ed, that if any Baker shall sell any Peck,  
 ‘half Peck or quartern Loaves, [not said  
 ‘half Quarterns] at any greater or high-  
 ‘er Price than shall be iet, or ascertained  
 ‘by the Magistrates or Justices; he shall  
 ‘for every such Offence, forfeit *ten Shil-*  
 ‘*lings.*

SINCE the making this last Mentioned  
 Act, (as is presumed) the Lord Mayor,  
 and Aldermen of London, have formed  
 a Table in which the Prices of Quartern,  
 half Peck, and Peck Loaves are calcu-  
 lated and adapted to the Market Price of  
 Grain; but as in this Table the Weight is  
 fixed, but the Price varies; so in the Table  
 annex’d to the Act of *Queen Ann.*, the  
 Weight (on the contrary) varies, but the  
 Price is fixed; each Table however pro-  
 ducing the same Quotients.

BUT as the ASSIZE hath by these Acts  
 recieved various Turns and Alterations,  
 it is easy from thence and the two Tables  
 to see what Room there is for the Bakers  
 to decieve the People.

BUT there is besides a much greater  
 Difficulty to conquer, for neither of the  
 Acts fix any Standard for the *Goodness* of  
 the

the *Bread*, and so though both the Price and Weight of Wheat be ascertained, yet if the Bakers are at Liberty to make their Bread of what *Goodness* they please, the Acts are dead, and of no Use or Advantage to the poor People; and the occasional printed ASSIZE in *London*, would be to no Purpose, were it not for the great number of Rivals in the Trade there; unless they have made Orders for fixing some Standard for *Goodness*.

AND that this is really the very Case, the following Fact will verify.

A grievous Complaint was made to two Justices of the Peace in the Country, of the exorbitant Price exacted for Bread, in a Town where there was no chief Magistrate; which moved the Justices to summon the Bakers to answer the Complaint, and in the mean Time to send (as is requisite by the Act) to the neighbouring Markets to be assured of the Price which Grain, Meal, and Flower then bore; and upon hearing both the complaining Poor, and the Bakers, and also what the Persons sent to Markets attested, the Complaint was fully made out, and established.

AND it appearing to the Justices that the Bakers to elude the Act, and render it impracticable, did not sell their Bread  
under

## 6      ASSIZE of BREAD.

This is under any of the Denominations of *White*,  
 not re- *Whipten*, and *Household*, as required by  
 medyed the Act, but under the Names of *Second*,  
 by the and *Midling*.  
 22d. of

Geo. 2d.  
 C. 46.

THE Justices upon due Consideration of  
 this Matter, according to the Powers  
 given them in the above Acts, and after  
 the Example of the Lord Mayor and Al-  
 dermen of *London*, ascertained the Price  
 and Weight that each Loaf was to be  
 sold at, and made an Assize Table for  
 them, and the Bakers complied in these  
 Particulars, and sold a Penny, two Penny,  
 &c. Loaf at those Prices, and their Loaves  
 were of the like Weight with those fixed  
 by the Table: but then these *Honest*  
*Conscientious* Bakers, made their Bread  
 of such base and coarse Flower, that the  
 People could not eat it, and by way of  
 Derision they called it the *Justices Bread*.

HEREUPON an Order was made by the  
 Justices, directing that the BREAD should  
 be of the same *Finess* and *Goodness* as the  
 Loaves were which the Justices had cau-  
 sed to be made; one whereof for the  
 Notice and Observation of all Parties  
 concerned, was ordered to be delivered  
 to, and kept by, the Clerk of the Market,  
 and the other by the Constable of the  
 Parish; and then the Bakers determined  
 to contest the Order.

THE



THE next Step therefore to be taken in this Case to compell an Obedience to the Order, was to form a conviction and Warrant of Distress; but as these required great Exactness, it became necessary that they should be perused and settled by Council; and as an Appeal is given by the Act, and the Bakers determined to fight it out; the poor People grew tired, and afraid of the Charges of Prosecution, and so sunk under the Burthen of their cruel Task Masters.

WHAT is to be done in such a Case as this, I know not; but am morally sure there is an absolute Necessity to fix the *Finess* and *Goodness* of the *Wheat* and *Flower*, as well as any other part of the ASSIZE.

WE all know that the Price of *Wheat*, differs at Market; according to its intrinsic Goodness, and therefore the Bakers are not to be at Liberty to buy *Wheat* at a lower Price, and say their BREAD is of the prime and best *Goodness*, and this without any Controul or Check from the Magistrate; for if so, it is evident from the Case above, that the Bakers will ever be too hard for the People, especially as those technical Terms *White Wheaten* and *Household* (differing from those in the *Affiza Panis* in the Statute of *Hen. 3.*)



## 8 ASSIZE of BREAD, &c.

are of a loose and lax Construction: they will not I fear (if canvaſt at Law) be ſufficient to bind ſuch ſlippery People as the Bakers are; even though they were free from that ſhameful Prevarication of denominating their Bread, *Beſt* or *Midling*, inſtead of *White*, *Wheaten*, and *Houſbold*.

WHEREFORE to guard againſt this Abufe of the Poor, I think that Samples of Flower ſhould be at proper and ſtated Times, brought to the Juſtices, or principal Officers of the Pariſh, to be viewed by them, before the Bread is baked; and that the Bakers ſhould beſides be obliged by Oath, to make their BREAD of the ſame Flower with the Samples produced.

BUT this cannot be effected without the Aid of Parliament, in whoſe View and Survey, all Difficultys Vanish; and who only can give the finiſhing Hand to the Acts already made in this Behalf.

AFTER having ſaid thus much concerning the Relief of the Poor, from the Oppreſſion they lay under by the Bakers; the next thing that occurs, is, how to prevent their ſquandering away their Earning at ALE HOUSES.

THE 1ſt. of *James* 1ſt. C. 9. Recites  
' that the antient, true, and principal uſe  
' of ALE HOUSES and VICTUALLING  
HOUSES

## ALE HOUSES. 9

‘ HOUSES, was for the Reciept and Lod-  
‘ ging of way-faring People, travelling  
‘ from Place to Place; and for the sup-  
‘ ply of the Wants of such as were not  
‘ able by greater Quantitys, to make their  
‘ Provision of Victuals; and not meant  
‘ for entertainment, and harbouring of  
‘ lewd and idle People, to spend and con-  
‘ sume their Money and Time, in a lewd  
‘ and drunken manner.

WHEREFORE amongst other Provisions  
in this Act to prevent the Abuses of Ale  
House Keepers.

IT was enacted, that they should not  
‘ permit or suffer any *Town Dwellers*, to  
‘ sit tipling or drinking in their Houses.

BUT it being found by Experience, that  
this Clause was too narrow and confined,  
and that all others but *Town Dwellers*,  
might be suffered to get drunk.

THEREFORE to cure this Evil, it was  
‘ enacted by the 1st. *Charles* the 1st. C. 4.  
‘ that no Ale House Keeper should suffer  
‘ any Person whatever, to sit drinking or  
‘ tipling in their Houses.

THE 4th. of *James* the 1st. C. 5. Re-  
‘ cites that the loathsome and odious Sin  
‘ of Drunkenness, is of late grown into  
‘ common Use, being the Root and Foun-  
C 2 dation

## 10 ALE HOUSES.

‘ dation of many enormous Sins; as Blood-  
‘ shed, Stabbing, Murder, Swearing For-  
‘ nication, Adultery, and such like; to the  
‘ great dishonour of God, and our Na-  
‘ tion; the overthrow of many good Arts,  
‘ and manual Trades; the disabling of  
‘ divers Workmen, and the general Im-  
‘ poverishment of many good Subjects.

THE 9th. of *Geo.* 2d. C. 23. recites  
‘ that the drinking of Spirituous Liquors  
‘ and strong Waters, is become common,  
‘ especially amongst the People of lower  
‘ and inferior Rank; the constant and ex-  
‘ cessive use whereof, tends greatly to the  
‘ Destruction of their Healths, rendring  
‘ them unfit for Labour and Business, de-  
‘ bauching their Morals, and inciting  
‘ them to perpetrate all manner of Vices.  
‘ And the ill Consequences of the exces-  
‘ sive use of such Liquors, are not con-  
‘ fined to the present Generation, but  
‘ extend to future Ages, and tend to the  
‘ Devastation and Ruin of this Kingdom.

THESE are lively Descriptions of the  
melancholly and dismal Effects of Drun-  
kenness, and of the fatal Consequences  
of it, all of them springing and arising  
from those cursed Seed Plots of Sin and  
Debauchery, the ALE HOUSES.

ONE would think that the black Ca-  
talogue given in the above Acts, of the  
pernicious

pernicious and woeful Consequences of the Sin of Drunkenness, should induce any Government (much more a Christian one) as far as possible, to put a stop to it; and in order thereunto, to suppress, or at least to reduce the number of ALE HOUSES.

MUCH better would it be for the State, to buy out the present Ale House Keepers, than to suffer such Plagues to rage in the Kingdom. — I shall not attempt to amplify the above Catalogue: but beg Leave to be a little more particular and explicit, in pointing out the Injurys continually accrewing to the *Parishes*, where the Drunkards live; to our Farmers, and our Commerce in general.

AND first as to the *Parishes*. These commonly speaking, are stored with Inns, the proper Places for Entertainment of Travellers, as best accommodated for their Services, and from whence also the Poor (not able to buy Provisions beforehand) may be easiest supplied.

THE Question then is, of what Use are ALE HOUSES? and the true and short Answer, is, *None*, I mean no good one; for without doubt, they are set up and used as Snares, to draw in and catch the Poor Labourers inhabiting in the *Parish*; by whom they are principally maintained,  
and



and who by spending and consuming their Wages in Drink, will with their Family at last come to the *Parish*, where the Charge of all ultimately settles: and hereby the Poor's Rate, where any number of these ALE HOUSES is, is increased (I may venture to say) in this Article alone, to six Pence in the Pound; and in many *Parishes* more.

A familiar Instance will illustrate this Truth. A poor Man is going home with his Weeks Wages in his Pocket, and with an honest Intent to pay his Weeks Debts; but is seduced into one of these ALE HOUSES, by some Fellow accidentally coming out, with a Pipe in his Mouth: and when the poor Man is got in, he is waited upon by the Landlord with a clean Napkin, Bread and Cheese, a Pot of Beer, and a good Fire; and he is so pleased, and is at such Ease, that he with his Companion drink away, go to Cards or Skettles, and are plied all the while with Drink; and partly by that, and partly by Play, the whole Wages are gone: and when the poor Man comes home empty of Money, and filled with Drink, his Wife scolds, his Children cry for Viſuals; and to get rid of this teasing and perplexing Condition, he returns to the same ALE HOUSE, goes a Tick there, and so  
to



to another, 'till no Body will trust him: then he runs away from his Family, and leaves them a Charge upon the Parish; and to finish this Tragedy, he falls to Poaching and Stealing, and then to the Gallows; unless by excessive Drinking, particularly of Gin; he comes (which is too often the Case) to an untimely and miserable Death before. And I verily believe, half at least of those that are hanged, might assign their Ruin to some or other of these Dens for Thieves, and Receptacles of stolen Goods.

AND then *Secondly*. As to the Farmers, it is evident that while their hired Servants or Labourers, are drinking at ALE HOUSES, and wasting their Money and Time there; the Farmer's Business is at a Stand, and perhaps too in the midst of Harvest. And the next News they hear from their Servants, is, that they want higher Wages, and why so? manifestly for this Reason, that they want to spend more Money at the ALE HOUSE.

AND then *Thirdly*. If Wages are risen, and the Price of the Labour of Hands increased, how is our Commerce to be managed or supported? for the Vitals of Commerce, subsist upon the reasonableness and mediocrity of Wages; without which, none of our Manufactures can find a Vent  
at

at Market abroad; but must give way to those Foreigners whose Workmen serve for less Wages.

BUT here it may be asked, and reasonably too; how comes it to pass, that these ALE HOUSES are allowed? and why such a number of them? since as it is urged, it is in the Power of the Justices, either not to licence them at all, or to abridge and retrench the number.

It is true, this is in the Power of the Justices, and I wish to God, they would be inflexible and deaf to all Importunity how impetuous soever. But the violent and never ceasing Sollicitation of the Brewer and Landlord, the pressing Instances and Interest of the Ale House Keeper, and of all his Train of Drunkards; concurring sometimes with Party, or self, or Election Interest, carry such Force and Weight with them, as often to be too heavy and prevalent to be withstood. But he that can bear up against the Stream of such an Application, must be owned and honoured as a Man of superior Virtue.

SINCE then the Justices have not been able to reduce the crowd of ALE HOUSES according to their Wishes, let me have Leave to propose a Method of Reduction, by Act of Parliament. And it is, that there

there should not be allowed any greater number of Ale House Keepers in any one Town or Parish, than in the proportion of one to an hundred Houses; and that none should be admitted or licensed, but such as were fifty Years of Age; and during the continuance of their Licences, were taxed and paid to the Poor's Rate, twenty Shillings a Year at least; and had besides, proper Certificates of their Characters and Situation of their Houses: making all Licences to the contrary, void.

THIS in my humble Opinion, would be of real Service to the Publick, and infinitely more beneficial in its useful Consequences, than any Revenue gained from *private Vices becoming Publick Benefits*. But as the Revenue arising from the number of ALE HOUSES is great, and the general Bent of the People to sustain them, is violent and stubborn; I much fear the Success of any expedient or Proposition to lessen them; and perhaps it will be said of me, that *I dream* when I make any such Proposal, and shall be told that instead of putting down of ALE HOUSES, I am building *Castles in the Air*.

BE it so, yet what I have said on this Subject, is serious Truth, and bottomed on various, wise, and well considered Acts of Parliaments and Proclamations in divers

## 16 ALE HOUSES.

Ages, from Time to Time.

BUT if any Reduction of ALE HOUSES (though gradually as the Keepers of them die, or are removed) cannot take Place, if this Demand I say, is too high.

LET us then see how they may *be regulated and kept in Order*, and how *suppressed, or otherwise punished for Misrule, by the present Laws.*

MANY Acts have been made, and new and additional Clauses and Provisions inserted from Time to Time, for preventing and punishing the Misdemeanours of Ale House Keepers, and the Misgovernance of their Publick Houses: but as my favourite Point is suppression, and in Order to it, to see what Difficultys may be in the Way to it, and how to remove them; for that Reason, and as I would not be accounted an Enthusiast, nor over tenacious of any Opinion, nor too prolix even upon the present Subject; I shall pass by all other Statutes, and advert only upon the Statute of the 5th. and 6th. *Edward 6. C. 25.* and a Clause in the 1st. *James the 1st. C. 9. and 4th. James the 1st. C. 5.* that relates to, and is founded on this of the 5th. and 6th. *Edward 6th.* and these concern three Classes, or sorts of Ale Sellers.

*First.* SUCH as shall obstinately and upon their own Authority, take upon them  
to



to keep a common ALE HOUSE, or tipping House, *without Licence.*

*Secondly.* SUCH as having a Licence shall *contrary to the Commandment of two Justices, use commonly selling of ALE and BEER.*

*Thirdly.* SUCH as being licensed, offend contrary to the Statute of the 1st. James C. 9. and 4th. James 1st. C. 5. whereby they are disabled after Conviction, to keep an ALE HOUSE, for three Years.

THE most useful and necessary Act (as it was intended) is that of the 5th. and 6th. Edward 6. C. 25. wherein, Power is given to the Sessions, or two Justices, to licence Ale House Keepers upon their entering into Recognizances for keeping good Order, as mentioned in the Act; all which Recognizances are to be certified to the Quarter Sessions; to whom particular Authoritys are given by presentment, Information, or otherwise, according to their Discretion, to enquire after the Breach of the same; and to award Process against the Party complained of, to shew Cause why he should not forfeit his Recognizance, with full Power to hear and determine the same.

AND it is further enacted, that if any Person other than such as should thereunto be allowed by the Justices, should

'obstinately, and upon his own Autho-  
 'rity, take upon him to keep a common  
 'ALE HOUSE or Tipling House; *or should*  
 'contrary to the Commandment of the  
 'Justices, use commonly Selling of Ale  
 'and Beer; that then two Justices (Quo-  
 'rum Unus) should for every such Offence,  
 'commit every such Offender to the Coun-  
 'ty Goal, there to remain without Bail  
 'or Mainprize by the space of three Days;  
 'and before their Deliverance, to enter  
 'into a Recognizance with two Suretys,  
 'not to keep a common ALE HOUSE; and  
 'this Recognizance also, is to be certified  
 'to the Quarter Sessions, and the same is  
 'to be a sufficient Conviction; i. e. for the  
 'Offence in this Clause: and the Justices  
 'are hereupon to assess a Fine of *twenty*  
 'Shillings, upon the Offender.

IT is evident in the first Place from the  
 foregoing Clause, as to the *first Class* of  
 Offenders, *viz*, such as take upon them  
 to keep common ALE HOUSES without  
 Licences, that every of them may for *every*  
 such Offence, be committed to the com-  
 mon Goal, to remain there for three Days,  
 without Bail or Mainprize. And in the  
 next Place, that they are not to be en-  
 larged from thence, 'till such Recogni-  
 zance is entered into, as above.

THE Punishment therefore of these Of-  
 fenders

fenders by Imprisonment, is plainly described and given in the Act; and so is the Method prescribed for effecting it. But if the Offender is enlarged by entering into the requisite Recognizance, the Method for prosecuting this sort of Recognizance, is far from being clear.

LET us suppose the Case to be, that an Offender of this kind, is brought before two Justices, and by them committed to the County Goal; and he enters into the required Recognizance, and is discharged from his Imprisonment, and his Recognizance regularly returned to the Sessions; and after this he keeps a disorderly House contrary to the Condition of his Recognizance.

AND now the Question is, what shall be done in this Case? and the Answer I presume will be, issue a Precept in nature of a Scire facias, against the Offender, to shew Cause why his Recognizance should not be forfeited.

BUT where is there any Power given in the Act for this Purpose? there is indeed full Power given in the first Instance, that is, to prosecute the Breach of *that* Recognizance which was entered into upon the licensing the Ale House Keeper, but none in this latter Case: and I am persuaded, that all these sorts of Recognizances

zances lie dead in the Sessions; and that no Process hath ever issued upon the Breach of any of them; nay, so far to the contrary, that it hath been said by a very eminent Clerk in the Crown Office, that those Recognizances could never be prosecuted with any Effect: if he meant they could not be prosecuted at the Sessions, he may be in the right; but I am apt to think, Methods may be found to put them in Activity and Execution in the superior Courts.

FOR though these last mentioned Recognizances, cannot regularly be proceeded on at the Sessions; yet may they nevertheless (as I conceive) be removed above, as in other the like Cases, and be there prosecuted; especially if in Order to obtain a Certiorari, a Copy of the Recognizance be taken, and Affidavits made, proving the Breach of the Condition of the Recognizance.

BUT if an easier and less chargeable Method was provided by Parliament, for prosecuting these Recognizances, as well as those taken after the licencing, by Scire facias, at the Sessions; this would relieve that Difficulty.

ADMITTING now, that the Recognizance, either by the way above proposed, or by an easier Way that might be given  
by



by Parliament, is put in Suit.

THE Recovery can only be of the Penalty. And is the Offender after that, to sin on impune? does the Statute afford no other way of punishing such a bold Transgressor, one who in Defiance of the Law, and in Breach of the Condition of his Recognizance, ventures upon, and persists in a scandalous and shameful Misrule in his House? Let us try if there is not; and in Order thereunto, proceed to the Consideration of the *Second Class* of offending Ale House Keepers, *viz.* Such 'as being licensed, and having entered 'into a Recognizance to keep good Order; and who for Misrule, are commanded by two Justices, not to use selling of 'Ale or Beer for the future, and see how 'this Case stands.

AND it is said, and accordingly it is 1st. Salk-laid down as a Rule, that where an Aleeld. P 45. House Keeper is licensed, he *cannot* be suppressed, but the Justices *must* either proceed upon the Recognizance, the Condition of which is broken; or else by Indictment, and then there must be such Disorders, as prove it a Nuisance.

ON the contrary let it be noted, that in the first Clause of the 5th. and 6th. of *Edw.* 6th. Power is given to the Justices of the Peace within every Shire, City, &c.

OR

or two of them at the least (*Quorum Unus*) to remove, discharge, and put away common selling of Ale and Beer in common Ale Houses, where they should think most convenient; and then follows the Clause, that none should be admitted to keep any common ALE HOUSE, but such as should be allowed in Sessions, or by two Justices of the Peace (*Quorum Unus*) who were to take Recognizances from the admitted Persons, for keeping of good Order and Rule: and the same are to be returned to the Sessions, and prosecuted in case of Breach of Condition, as above mentioned.

AND then comes the Clause upon which the Question arises, that if any Person other than such as are admitted by the Justices, shall obstinately and upon his own Authority, take upon himself, to keep a common ALE HOUSE; or shall contrary to the Commandment of the said Justices, or two of them, use commonly selling of Ale or Beer; that the said Justices, or two of them, should for every such Offence, commit the Offender to the Common Goal without Bail or Mainprize for three Days, and until he enters into a Recognizance with two Suretys, not to keep any common ALE HOUSE.

Now in Order to consider whether the Rule

Rule laid down by *Serjeant Salkeld*, for prosecuting the Recognizance by *Scire facias*, is Standard.

LET us think a little upon those Words; or *shall contrary to the Command of the said Justices, or two of them, use commonly selling of Ale and Beer*. To give these Words their due Force, we should understand them to be disjoined from the preceding Words; and to import, that if any *unlicensed* or *unallowed* Persons, shall keep a common ALE HOUSE, or being *licensed* or *allowed*, shall afterwards *contrary to the Command of two Justices, continue to sell Ale or Beer*; then the Offender in *either Case*, to be committed as above; and unless this Construction be put upon the Act, I know not of what Force or Efficacy those Words are, that make up and compleat the whole Sentence: for supposing they have Relation only to *unlicensed ALE HOUSES*; the first Words were of themselves, amply sufficient to warrant the Commitment, without any after Prohibition or Command from two Justices; and that both sets of Words may appear in one View; they will stand thus.

If any *unlicensed* Person keeps an ALE HOUSE, he shall be committed; or if any *licensed* Person keeps an ALE HOUSE after Commandment to the contrary, he shall be committed. E IF

IF this is not the Case, of what Use then are these Words impowering the Justices to commit an Ale House Keeper, if he sells Drink, *contrary to Command?* when he might be committed, without *any such Command, as being unlicensed;* and which could be done without annexing to, or inserting in the Warrant, any Affirmative of a *Command;* the Want of Licence, being without more ado of itself sufficient for the Commitment.

AND if this is not the proper Construction of the Clause, what Account can be given of that general Clause, in the first Part of the Statute; *Authorizing the Justices of the Peace, or two of them (Quorum Unus) to remove, discharge, and put away common selling of Ale and Beer, where they shall think most convenient;* and this too brought into the Act, in precedence to any other Powers.

AND that this is the true Construction of the Act, and that the Justices may either suppress the Ale House Man, keeping a disorderly House; or instead of that, if they think fit, proceed on the Recognizance. The following Case which is later in Time, than that stated in *Salkeld*, affirms.

AT the Quarter Sessions holden at *Guilford*, the Justices grant a Licence to  
*George*



*George Harris*, for keeping a common ALE HOUSE; and at the next Sessions they made this Order, *viz.* Whereas it appears to this Court, that *George Harris* doth keep a lewd and disorderly House. It is therefore ordered by this Court, that the said *George Harris*, be, and he is hereby suppress'd from keeping of an ALE HOUSE after six Weeks Time, from the first Day of this present Sessions.

Lord  
*Raymond*  
Vol 2. P.  
1303. the  
Queen,  
against  
*Harris*.

THIS Order being removed into the *King's Bench*, the Objection to it, was the same as above, *viz.* That *Harris* had entered into a Recognizance, and that the Proceedings should have been by way of Scire facias, in order to the Forfeiture of the Penalty. But by the Court this Order was confirmed, (*Holt* Chief Justice being absent) and by Justice *Powel* it was declared, that the Justices in the Sessions, have a Power by the Act of the 5th. and 6th. of *Edw. 6th.* to suppress ALE HOUSES; and need not to proceed on the Recognizance, having a discretionary Power given them, to suppress them without shewing any Cause of Misdemeanour: and where the Act speaks of a Conviction, (i. e. upon a Scire facias on the Recognizance) that is only intended where the Justices proceed on the Penalty of the Recognizance; which

'ought to be by Scire facias.

See also  
Session's  
Orders,  
edit 1750  
P. 267.

THERE is another Case in the same Book, Page 1405. The 11th. of Geo. 1st. between the KING and *Venables*; where an Ale House Keeper, keeping a disorderly House, and because *there were too many Ale Houses in the Town*, was suppress'd by two Justices, and he continuing to sell Ale and Beer, was committed; and the Orders of Suppression and Commitment, after great Altercation in the *King's Bench*, were confirmed: and though it doth not expressly appear in the Case, whether the Ale House Keeper was or was not licensed, yet it is strongly *implied* that he was licensed; because he is not convicted as an unlicensed Ale House Keeper, but as one keeping a disorderly House. Be it however the one way or the other, yet this is remarkable in the Case, that the Council for the Orders, in arguing the Case, insisted that the Justices were Judges what number of ALE HOUSES were proper to be permitted; and as they had declared there were too many in the Town, therefore the Orders of Suppression were good; and this Position not being denied by the Court, and the Orders being confirmed in the whole, so much may be inferred, that whether the Ale House Keeper was or was not licensed, yet

yet if there are too many of them, and one of them is commanded not to continue selling Ale or Beer; he may if he persists in selling such Drink, be committed.

AND yet I know of no *express* Authority the Justices have for a suppression, by reason of an over number of ALE HOUSES; except it be by the above Clause already considered, or by the general Power given them in the beginning of the Act, to remove, discharge, and put away the common selling of Ale and Beer; and this Power being allowed (as it seems plain in this Case to be) then it may be made use of in each Case, instead of proceeding by Scire facias, as on the Recognizance.

BUT here it may be urged that if a second or third Commitment of the offending Ale House Keeper were allowed, yet whenever he is committed, he can be manumitted and enlarged by new Securitys, and therefore his Recognizance must in the last Event, if he continues perverse, be put in Suit for the Recovery of the Penalty. — It is true, but I presume that the Recognizance at first entered into, not to sell Ale and Beer, to be but slight, both with respect to the Ability of the Security, and the penal Summ in it: and therefore he is encouraged

ged and tempted to stand the Suit, rather than be divorced from his beloved ALE HOUSE. But if the Ale House Keeper offends a second Time, the Stroke may be dealt home; and the Justices may then with great Reason, require such Securitys of such Substance, and under such a Penalty, as to deterr him from committing such another Offence again: or after all, if a Law was thought necessary to inforce this Method of Suppressing the Delinquent, by committing him instead of three Days, to remain in Prison 'till the next Quarter Sessions; and then not to be discharged without such Security as that Court should direct; it would be in my humble Opinion, a very salutary Provision, and of excellent Use to subdue this noxious Brood of Leaches.

I have been so long upon these Heads, that I shall have less to do as to the third and last Head; which concerns those who being licensed, offend contrary to the disabling Clause in the Statute of the 21<sup>st</sup>. of *James* the 1<sup>st</sup>. C. 7. And here the like and greater Difficultys than what we meet with in the Proceedings against Ale House Keepers licensed, will also be in our Way as to such as having been licensed, are afterwards disabled for three Year; so far I mean, as that space of Time reaches. FOR



FOR the 21st. *James* 1st. C. 7. only Enacts, that if any Ale House Keeper be convicted of any Offence against any of the Branches of the 1st. *James* 1st. C. 9. or the 4th. of *James* 1st. C. 5. or against this Act, he should be disabled for the space of three Years, to keep an ALE HOUSE. Yet it gives no Penalty, nor any Direction, what is to be done if the Ale House Keeper offends in *this* Instance; nor do I know what is to be done, but I presume the Justices when they convict such an Offender, must forbid him in Form, to sell Drink during that Time, and bind him to the Sessions to answer for his Offence, if he does: the Prosecution of which, will not only be troublesome and chargeable, but be attended also with some Difficulty in drawing and settling an Indictment, upon a Case perhaps of the first Impression.

THE next thing that falls under our Inquiry, is the Act of the 17th. of *Geo.* 2d. C. 5.

### Concerning ROGUES and VAGABONDS.

THIS Act if well executed, and not perverted to any private Purpose, is invaluable; and that the Utility of this Act, in that Branch of it which relates to the

the Punishment, or Imprisonment of VAGABONDS may appear in a clearer Light, let us review the Act of the 13th. of Geo. 2d. C. 24. (repealed by the present Act) so far as concerns this particular.

THE 13th. of Geo. the 2d. C. 24. after having described who are ROGUES and VAGABONDS; Enacts, that if any such ROGUE or VAGABOND, should be apprehended and brought before any Justice of the Peace, it should *be lawful* for such Justice (before such Person be sent by the Pass directed in that Act, if *such Justice should see Cause*) to send him to the House of Correction, there to be kept to hard Labour until the next Quarter Sessions, or for such shorter Time as the Justice should think fit, according to the nature of the Offence; and that such Person should afterwards, be sent away by such Pass, as is appointed in the Act. But notwithstanding this Clause, the Streets and Towns swarmed with these Locusts: and can this be attributed to any thing else but the remissness of the Justices, to punish the Robbers of the true and real Poor; at least this appears to be the Case by the Provision made in the 17th. of Geo. 2d. C. 5. For it is here no longer *left* to the Justice, to punish and Imprison these

ROGUES

ROGUES, or not; no, on the contrary, his *Authority* to do it, is changed to a Command. And the Words are, 'That the Justice shall, and is *hereby required*, to order such Persons [i. e. ROGUES and VAGABONDS] so apprehended, to be publickly Whipt by the Constable, Petty Constable, or Tithing Man of such Parish where such Persons were apprehended; or to order such Persons to be sent to the House of Correction, there to remain until the next Quarter Sessions, or for any less Time, as such Justice should think proper. And after such Whipping or Confinement, *such Justice may, and he is impowered if he thinks convenient*, by a Pass under Hand and Seal, in the manner and Form as in the Act directed, to cause such Persons to be conveyed to the Place of their Settlement.

HENCE it is plain, that there is nothing left to the Power of the Justices, but whether they should or should not convey the ROGUES to their Settlement: but the inflicting the previous Punishment of them, is fixed upon the Justices, by the express Words of the Act; nor is it any great Matter, whether the Justices do or do not send them to their Parishes after whipping, because if they beg again any  
F where

where, they are deemed to be *incorrigible* ROGUES, and to be punished as such: and therefore it lies upon the Offenders to go home, and avoid incurring by a second Offence, the Peril denounced upon the incorrigibles. It is however, more benevolent after Punishment, to send them home, that they may be there set to Work. But notwithstanding this salutary Clause in the Act, requiring the Justices to punish or imprison these VAGABONDS, yet still they abound every where; which proves plainly that they are not commonly and uniformly punished or imprisoned as they ought to be: and I can guess at no other Reason for this Neglect, but this, that some Gentlemen give too strict an attention to the Form of the Pass, as printed in the Act; concluding that this is all which is necessary to be pursued, without having that regard as should be, to the substantial part of the Act, which requires the chastising these VAGABONDS: and herein too, I fear some are misguided by the printed Forms in the Shops.

THE Reason why the Form of the *Pass* is prescribed in the Act, without the Forms of Precepts, or Warrants for Punishment or Imprisonment, is as I conjecture; because it was thought that the Justices would in Conformity to the Act,  
issue



issue out distinct Warrants for this purpose before they made their Passs. But this being an additional Trouble (heavy enough without it) and necessary in this Case, for Gentlemen not bred to the Law, to strike out the Form themselves; might be one Reason to omit the issuing Warrants for Correction. But to save Trouble, I propose that the Warrants for Correction, be by the Addition or Interposition of a few Words to the common printed Pass given by the Act, to compleat at once the whole Process of punishing and passing these VAGRANTS. And to this End (as I think I am authorized by the Clause in the Act, preceeding or rather accompanying the general Passs) I have ventured in the appendix hereto annex, to offer to the Consideration of Gentlemen in the Commission of the Peace, two Sets of such Warrants and Passes; the one Set for *Whipping* and then passing the VAGABOND to his Settlement, if in the proper County; and another for Whipping and then conveying him to his Settlement, if in a foreign County; the other Set, to send the *Vagabond to the House of Correction*, and upon the Expiration of the limited Time, to convey him either to his Settlement, as it may prove to be in the home, or a foreign County: and if

F 2

these

these are approved, or being corrected according to better Judgement, and then printed; I should hope it would not be thought too much Trouble by this Method, to get rid of these Vermin; reducing them to a State of honest Labourers.

BEFORE I quit this Subject, I must take Notice of a Clause in the Statute of the 17th of Geo. 2d, enacting that any Persons aggrieved *by any Act of any Justice, in the Execution of this Act; may appeal to the next General or Quarter Sessions of the Peace, giving reasonable Notice thereof,* whose Order thereupon shall be final.

SUPPOSE now that a VAGABOND is brought before a Justice, and upon Examination of the Matter, it appears to him, and accordingly he declares him to be a ROGUE, within the Intent of the Act; and the VAGABOND hereupon, gives him Notice of an Appeal: I ask what is to be done in this Case? is it proper for the Justice to punish the Party notwithstanding the Notice, and so make himself liable to an Action at Law, if upon the Appeal he was mistaken in Judgement; or in the next Case, must he let the VAGABOND go? this is a difficult Question to resolve; but I think in this Case, the adjudged VAGABOND should by Act of Parliament be obliged to give his Notice  
in

in Writing, and Security to prosecute his Appeal.

ONE thing more I have to add, and that concerns a novel Practice sometimes used, of conveying *Intruders* into Parishes, not by the ordinary Way of Removal by *two* Justices, but as VAGABONDS, by *one*. And here let us resume the consideration of so much of the VAGABOND Act, as may be necessary to shew, how far this new Method of Conveyance swerves from that appointed by the Act.

‘ By this Act, the Justice is required to  
‘ inform himself by the *Examination* upon  
‘ Oath of the Person apprehended, or of  
‘ any other Person, of his Condition and  
‘ Circumstances, and of the Parish or Place,  
‘ where he was duely settled; and upon  
‘ such Examination, if the Justice finds  
‘ him to be a VAGABOND, he is to put  
‘ the Substance of it into Writing, to be  
‘ subscribed by the Person examined, and  
‘ being signed by himself, he (the Justice)  
‘ is to transmit it to the next Quarter  
‘ Sessions, to be holden for the County;  
‘ and then he is required to cause the  
‘ VAGRANT to be whipt, or imprisoned:  
‘ and after that, he is authorized to pass  
‘ away the VAGRANT as directed by the  
‘ Act; annexing a Duplicate of the Ex-  
‘ amination to the Pass, to be sent there-  
with

‘ with; and the Constable is at the Close  
‘ of the Conveyance of the VAGABOND,  
‘ to deliver him to the Church Wardens  
‘ or Overseers of the Poor of the Parish,  
‘ to which he is ordered; with the Pass  
‘ and Examination.

INSTEAD of pursuing these Directions, the first Justice sends the supposed VAGABOND from County to County, without ever *examining him upon Oath*, or adjudging him to be a VAGABOND, or ever whipping or imprisoning him; or annexing to, or sending any Examination with the Pass; and yet this Pass, by the great Condescension of other Justices, goes through the whole Journey. A compendious Way of passing, not of VAGABONDS, but Intruders! it is easy to see the Reason of commencing and entering into this Method; for if an Intruder into a Parish, is brought before Justices to be examined concerning his Settlement, and it is found to be at a great Distance, the Charge is too heavy for the Parish, and they had better keep the Intruder, than be at the Expence of removing him; and therefore this way is found out, to spare the Parish, and impose the Charges upon the Counties. Suppose now that such a VAGABOND as this in Consequence of the Pass, is delivered to the Officers of the Parish, to  
which



which he is ordered; and with it suppose that two Justices there, upon Examination of the Person sent as a VAGABOND, find his last Settlement to be at the Place from whence he came, or at some other distant Place: I ask which Way are they to take to get clear of him? they cannot return him as a VAGABOND, to the Parish from whence he came; for he was sent by an Order or Pass, though a faulty one: wherefore they must either appeal from that Order, as conveying the VAGABOND to a wrong Settlement, and follow their Appeal to a distant County, or else commence a Removal to the true Place of Settlement, by the Order of two Justices; and this must be at the Charge of the injured *Parish*, while the other was at the *County* Charge.

CERTAINLY then to avoid these Difficultys and Deviations from the Act, and also to relieve the Parishes or Counties from this sort of Charges; the best Way would be, to lay the Burthen upon the Offender. I mean him that intrudes into any Parish; for here is the original Fault, and it is highly unreasonable to punish an innocent Parish, and let the Injurer go free; would it not therefore be right, for the two removing Justices, in all Cases of Intrusion, to be impowered within a limited

limited Time, to distrain if they think fit, for the Charges of Removal, upon the Goods of the Intruder; subject nevertheless to an Appeal upon proper Security to prosecute it, and for want of sufficient Distress, to treat and convey him as a *true VAGABOND*, wandered from his Settlement?

I have now finished what I had to say, as to VAGABONDS, and the next thing that demands our Consideration, is,

### The HIGHWAYS.

THESE the Romans of all other People took the most Care of, and the Labour and Expences they were at, to render them durable, spacious, straight, smooth and agreeable to the very Extremities of their Empire, are incredible; serving not only for military Marches and Expeditions, but also for Commerce, Traffick, and other publick Uses, Conveniencies and Emoluments.

*Bracton* THE Via Militaris in our Law Books,  
*Lib 4. C.* is used for an high or publick Way, that  
*16. Dr.* leads to the Sea, to a Port, and to a  
*Brady's* Market.  
*Hist. of*

*England.* THE Via Regia in the Laws of *Henry*  
*V. 1 P 48* the 1st. is defined to be that which is always open, and which no Body may shut by any Threats.

IN

## HIGHWAYS. 39

IN the making the military Ways, the Peasants, Provincials, and Inhabitants, were compelled to work; and they had the natural Advantages that attended these Ways, by the mutual Traffick, Commerce, Buying, and Selling, that were conveyed to them thereby.

AND as these Emoluments principally centred in the Inhabitants, it was incumbent on them, to maintain those Ways by which they received such Advantages; and without doubt, Time out of Mind, even in the Infancy of Government, it became their Duty to repair them: and in whatsoever Parish the *Highway* lieth, the whole Parish is of common right, bound to repair it, except it appear that it ought to be repaired by some particular Person, either Ratione Tenuræ, or by Prescription.

*Brady.*  
Vol. 1. Pa:  
49. 50.

1st. Ro. A-  
bridgm't:  
393.  
Stiles 163.  
1. Vent. 90.  
183. 189.  
Crook. E-  
liz. 63.  
Palm. 389.  
H.H.P.C.  
144.

AND no agreement whatever, can alter or take away this Charge and Duty on the Inhabitants, who are the Men solely in the Eye and Regard of the common Law, liable to it; and have Time immemorial, been punish'd by Indictments, or by Presentments in the King's Courts, and Court Leets, whenever the *Ways* were out of Repair.

BESIDES which the Sovereign can also by his Prerogative, award his Commission

*Dalton.*  
Chap *High*  
*ways.*

G

not

Reg. Judic  
Writs 154.  
Bonds Jus-  
tice, Part I  
Page 131.

not only for the amendment of *Highways*, but of Bridges also, throughout his Realm; or he may send out his Writs of *Distringas ad Reparandum*, to any Ports or Parishes within it.

1st. Mod.  
112.  
1. Vent.  
256.  
2. Levinz.  
102. and  
see the 22.  
H. 8. C 25

AND such Care is taken to fix to a Certainty, who are the Persons bound either *ex communi Jure*, by Tenure, or Prescription, to repair the Roads; that if the Parishioners who are of common right to repair them, are indicted for not doing it, they cannot plead generally that *they* are not bound to repair, but must show *who is*; and if it is unknown in what Parish the defective Road is, and who is to repair it, then a Writ is to issue to the Sheriff, to inquire by a Jury who are the Persons that are obliged to repair, and to distrain them 'till it is done.

Dalton Ch.  
*Highways*.

9. H. 7. C.  
5. Br. Nu-  
fance. 28.  
Co. Littl.  
56 (a) 5.  
Eliz. C 13  
18 Eliz. C.  
10. 3 & 4  
W. & M.  
C. 12. 1 G.  
1. C. 52. H.  
P. C. 144.  
Co. Rep 8.  
113. 1 Haw  
Kins. 212.

are

THE Tenants too of Lands adjoining to the *Highways*, to facilitate the Reparations, are bound both by common and statute Law, to scour their Ditches and Water Courses, if thereby the *Highways* are annoyed, and all Nuisances in the *Highways*, are punishable at the Leet, or by Indictment at the common Law.

AND to exclude all imaginable Excuses or Pretences, that the *Highways* cannot



cannot be amended either if they lye out of the Parish or Hundred, or because it cannot be found who are to do it, the whole County in this Case, are obliged to it, and indictable for it, if not done; and the Reason is, because they, for a Certainty have their Ease and Advantage by it.

Dalton Ch.  
Highways.  
Bond's Jus-  
tice. Part 1.  
Page 191.

AND it is no Excuse for the Inhabitants of a Parish, indicted at common Law, for not repairing their *Highways*, to say, that they have done the work required by the Statute: for the Statutes are made in Aid of the common Law, which without any such Aid, extends so far, as that when the Necessity of the Thing requires it, to allow even *that* to be done, which in other Cases is considered as a *Trespass*.

THUS if an *Highway* leading through a Field, is foundeours; Travellers may go out of the track Way, notwithstanding there be Corn sown, and where it hath been used Time out of Mind, for the King's Subjects to go by Outlets from the *Highway* into the Lands next adjoining, when the *Highway* is foundeours: these Outlets then, become Part of the *Highway*.

1 Ro. A-  
bridgm't.  
390 Crook  
Char. 366.  
S. C. Yelv.  
141.

AND if an *Highway* is not sufficient, any Passenger may break down the Inclosure of it, and go over the neighbour-

3 Salkeld.  
182. Bon.  
Justice 1st.  
Part P 130.

ing Lands, and justify it, 'till a sufficient Way is made.

AND yet in these Cases, it is manifest, that there is an Injury done to an *innocent Man*; which I here take Notice of for a particular Reason, to be mentioned by and by: in the mean Time let it suffice, that the Safety of the People in general, is the highest Law; is the Essence of the common Law; and in the Case before us, makes the Remedy adequate to the Disease: and all Acts of Parliament past at any Time respecting the *Highways*, are subservient and auxiliary to it, from the earliest Time, to the present.

AND therefore the strictest Care and Attention should be had, not to break into the common Law, or to any Process of Law, depending upon it, particularly that of Indictments, least some Mischief be let in not to be foreseen.

AND this I have the rather treated of at large, because a learned Author of a Treatise on the *Highways*, has Advanced some Propositions which however well intended, are not satisfactory to me, though probably they may be so to others. However as the most valuable concern to the Publick, (I mean that of amending the *Highways*) is by this Gentleman, treated of with a becoming Zeal; his  
Work

Work is extreamly commendable, though it should not succeed to his Mind; because by Attempts of this Sort, from one or other of them, something very useful may be struck out, to a general Reception and Satisfaction. Nor would I have it understood, that I presume to over-rule what he has laid down; his Hypothesis, System, and Propositions contained in the Treatise, being worthy of Consideration.

BUT nevertheless as what he has laid down in some Particulars, are not convincing to me; I beg Leave to offer my Reasons upon them, with all due Submission to him, and to other Gentlemen.

HE says that the presenting or indict- Page 67.  
ing of Parishes, or Towns, &c. for not repairing their Publick Roads, generally prove.

1<sup>st</sup>. HARD and injurious to particular Persons.

2<sup>dly</sup>. SELDOM if ever answer the intended Design.

AND 3<sup>dly</sup>. cause the Laws relating to the Surveyors, to be greatly neglected.

AND consequently that both these Prosecutions, ought to be entirely taken away by an express Law.

AND instead of these, he says the most just and effectual Way to have the publick Roads kept in good Repair, is to oblige

oblige the Surveyors to do their Duty.

Page 6. 7. 8.

IN support of this Objection, he says, that it appears by the Statute of the 3d. and 4th. *W. and M. C. 12. S. 3.* ' That ' the Surveyors of the publick Roads, ' may be Men of mean Circumstances, ' and such Persons as have no manner of ' Property in the Parish, chargeable to ' the Repair of the *Highways*; for says ' he, the highest Qualification required ' for that Office by the Statute, is ten ' Pounds a Year real Estate, or a Hun- ' dred Pounds personal Estate, or a Ten- ' ancy of thirty Pounds a Year, and if ' none such be found so qualified, then ' the Act directs, that the most sufficient, ' be chosen.'

' SUPPOSE then says the Author, that ' such *mean* Persons, such Surveyors as ' above mentioned, should from mere Idle- ' ness, or Obstinacy, or a Dislike to their ' Office; omit to repair the Roads, or to ' call out the Parishioners to do their six ' Days Work, or to oblige them (when ' called out) to Work duely and honestly: ' would it not in either of these Cases be ' very hard and unjust, that for this O- ' mission of the Surveyors, a Presentment ' or Indictment should be put upon the ' Parish? for in the nature of such Pro- ' secutions, *no distinctions can be made* between



‘ between Persons and Things; but the  
 ‘ Innocent are equally punished with the  
 ‘ Guilty. And the Property of such as  
 ‘ contribute their best Endeavours to put  
 ‘ the Roads in Repair, is affected in the  
 ‘ same manner as the Property of those  
 ‘ who neglected or refused to work.

‘ AND he adds, that in such Cases ge-  
 ‘ nerally speaking, the innocent Inhabi-  
 ‘ tants suffer also the Punishment even of  
 ‘ the Surveyors Transgressions; while the  
 ‘ Surveyors themselves, who have little  
 ‘ or no Property, undergo no Penalty,  
 ‘ nor suffer any Punishment: ’ and this is  
 the main and principal Cause offered by  
 the learned Author for the taking away  
*all Prosecutions by Indictment or Pre-  
 sentment.*

IN order to clear the Way to the fol-  
 lowing these Objections; let me have Leave  
 to repeat the Supposition made by the  
 Author, viz.

*Suppose the Surveyors to have no Pro-  
 perty, and that from mere Idleness or Ob-  
 stinacy, or a Dislike to their Office, they  
 should omit to repair the Roads, or to call  
 out the Parishioners to do their Work.*

AND in Consequence of it, the Roads  
 are in a wretched and ruinous State: I  
 then ask, how can they be amended at  
 all, if the Method of Prosecution by In-  
 dictment

dictment, or Presentment, are abolished? for it is plain they cannot be amended by any Levy on Surveyors, that have no Property; and it is as plain the Inhabitants cannot be compelled to do it, if the Indictments and Presentments are taken away by an express Law. And this will be the natural and obvious Objection to the destroying Indictments in all Cases of this kind, however modified, even in those proposed by the Author, if we suppose as said before, that the Surveyors are poor, obstinate, and refractory.

BUT alas! all the Provisions made by many Acts of Parliament as assistant to the common Law, for compelling the amendment of the *Highways*, are scarce sufficient to enforce its Execution, though duely complied with; and now it is proposed to leave out that which has stood its Ground from the Foundation of the Constitution, to this Time: I mean that of the Indictment, together with *that* also which so long ago as the fifth Year of *Queen Eliz.* was by the Wisdom of Parliament given to the Justices to supply the want of an Indictment, and all this for the purpose only of preventing or releiving some *innocent* Inhabitants (as they are filed) from the Injuries they may sustain by the Fines leviable upon them

them, by Indictments or Presentments, occasioned by the Faults or Neglects of the Surveyors. The Innocency of these Inhabitants, and how far they ought in Justice, if at all, to be excused, comes now to be considered.

The Amendment, Surveyorship, and Care of the Roads, originally and down to the 2d. and 3d. of *Philip* and *Mary*, solely belonged and appertained to the Inhabitants, including such as were bound by particular Tenures or Prescription, to perform their Parts; and they were punishable only by Indictment or Presentment at the Eyre, the Oyer and Terminer, Sessions, or the Leet, or by the King's Prerogative.

BUT it being found necessary, that Surveyors or Curatores Viarum, should be appointed for the amending the *Highways*, which by the Neglects and Defaults of the Inhabitants, were very noisome and tedious to travel, and dangerous to all Passengers and Carriages.

It was by the said 2d. and 3d. of *Philip* and *Mary*, enacted, 'That the Constable and Church-Wardens of every Parish, should yearly, upon Tuesday or Wednesday in Easter Week, call together a Number of the Parochians, and should then elect and choose two honest Men

H

of

of the Parish, to be Surveyors and Overseers for one Year of the Works, for the amending the *Hghways* in their Parish; the which Persons should have Authority by Virtue of this Act, to order and direct the Persons and Carriages that should by them be appointed, for these Works; and the said Persons so named, should take upon them the Execution of their Offices, upon Pain every of them making Default, to forfeit twenty Shillings.

AND it was further enacted, that the Constable and Church-Wardens, should then also name and appoint, four Days for the amending of the said Ways, before the Feast of St. *John* the Baptist; and should openly in the Church, the next Sunday after Easter, give Knowledge of the same; and upon the said four Days, *the Parochians should endeavour themselves to the amending of the said Hghways*, and be chargeable thereunto, as stated and directed in the Act.

AND hence I observe that the Justices have nothing to do with the Nomination, or Appointment, of the Orderers of the Work; but on the contrary, it is placed where it should be, in the Officers and Inhabitants of the Parish; these were they



they on whom it was ever incumbent to amend the *Highways*: and because they were in great Disorder, and perhaps every Man looking after the Way leading to his own House, the general Repair was neglected; and therefore *honest* Men of the Parish, were by this Act to be chosen, to order and direct the *whole*; and to see that all the Roads in the Parish, leading to any Market Town, should be taken care of, and the Inhabitants or Parochians, were to endeavour themselves to the amending of them, as directed by the Act.

AND it is evident that this Act had never taken Place, if the Parochians whose Duty it was to keep the Roads in Repair, had not suffered them to be dangerous to all Passengers, and Carriages; and which by this Act, is endeavoured to be remedied by Substitutes elected by them, to order the whole Work; and consequently these Surveyors are but Delegates, Substitutes, or Deputies, to the Inhabitants; and for whom, as such, they ought in this, as well as in other Cases, to be answerable.

‘ By the 22d. of *Charles* the 3d. C. 12.  
 ‘ it is enacted, that in every Parish, the  
 ‘ Surveyors and Orderers of the Works  
 ‘ for amending the *Highways*, should  
 ‘ yearly be chosen and nominated by such  
 H 2 Persons

Persons, as by the Act made in the 2d. and 3d. Years of *King Philip* and *Queen Mary*, were to be appointed; and consequently the Nomination and Appointment of them, still rested upon the Officers and Inhabitants of the Parish. And thus the Choice of the Surveyors of the Works, remained in the same Electors, without fixing any other Qualification on the Persons chosen to be Surveyors, but singly that of being *honest Men*; until the 3d. and 4th. of *William* and *Mary*.

WHEN it being found that the Inhabitants not having been required to choose Surveyors, otherwise qualified, than as *honest Men*; chose the meanest in their Parishes; and the Roads for want of due Care and Survey, became impassable.

WHEREFORE it was by this Act ordained, that on the 26th. of *December*, yearly; the *Constables*, *Headboroughs*, *Tithing Men*, *Church-Wardens*, *Surveyors of the Highways*, and *Inhabitants* in every Parish, should assemble together; and the Major Part of them so assembled, should make a List of the Names of a competent Number of the Inhabitants in their Parish, who should have an Estate in Land, of the Value of ten Pounds a Year; or a personal Estate

‘ Estate of a hundred Pounds; or were  
‘ Occupiers or Tenants of Houses or  
‘ Lands of the yearly Value of thirty  
‘ Pounds: and if there be no such Per-  
‘ sons, then the List to be of the most  
‘ sufficient Inhabitants; out of which,  
‘ the Justices at their special Sessions,  
‘ were to appoint one, two, or more, as  
‘ they should approve of, being of such  
‘ Sufficiency as aforesaid.’

THIS is the first Time that the Justices had any Share in the Appointment of the Surveyors, and the Reason seems plainly to be, and it is so intimated by the Act, that the Roads by the intolerable Neglect of the Inhabitants, were become impassable; and therefore the Inhabitants should not any longer be left to choose indefinitely such as they called *honest* Men, how mean so ever; but should make a competent List of such as were qualified in such manner, as by this Act is appointed; where out the Justices were to pick some or other, as they thought were sufficiently qualified.

AND now let us see, whether the innocent Parochians have since this Act, done their Part in a proper Choice of qualified Persons, or not.

AND I am sorry to say it, that though the Inhabitants have a Latitude of Choice  
given

given them, of Persons above the Degrees and Qualifications mentioned in the Act; yet we rather find the Lists returned stinted, and if any thing, rather below than above those Qualifications. Ale House Keepers and mean Persons, barely within the limited Qualifications, are returned; and if there are but some out of which the Justices can take a Number, in any requisite Qualification, they think it sufficient: and out of six returned, two or three have sometimes been Ale Sellers.

AND when the returning Officers have been told, that they have Men much better qualified in the Parish, than those returned; they have said, we are under the Subjection and Fear of the greater Men, and dare not return them.

AND yet in the Lists of Defaulters, the very best of the Inhabitants, have been found to be vexatiously, and without Reason, returned as Defaulters.

I know not how to account for this Treatment of the Inhabitants, otherwise than by considering, that if the higher sort of the Parishioners are chosen, they would (if they could) make the rest do their compleat six Days Work; which by choosing mean and dependent Persons to be Surveyors, would not be the Case: for they know these would favour their Neighbours



Neighbours, and be induced to connive at their working half the Hours appointed, bringing half Loads, sending out half their Strength, with a Boy instead of two Men; dividing a Team of six Horses, into two, with three Horses; or with five, into three, and two Horses; reckoning these divided Teams, serving for three Days, to be equivalent to six Days with the whole Teams: and to this, add, they seldom come out with any of the Tools required by the Statute.

AND I am satisfied, and grant that these kinds of Surveyors, are partial in the Execution of their Office; making some come out to do their Duty, while for Money or Gratuity privately received, they will skreen others who are Defaulters; leaving them out of the List of Defaulters, when delivered to the Justices, if not obliged by their Oaths, to discover them.

BUT then I ask how comes it to pass, since the Inhabitants are liable (as suggested) to so many Injurys from the Fraud, Iniquity, Defect of Duty, and Partiality in the Surveyors; that they never, or very seldom, if ever, inform the Justices of the Offenders and Offences; nor ever indict them for their Misdemeanors; nor take any Notice of Nufances

ances occasioned by the not scouring the Ditches adjoining to the *Highways*?

THIS Question is not easy to be answered, by the innocent Inhabitants.

BUT the true Reason, is, as I conceive, because the Surveyors favour the Inhabitants; therefore these, never, or very seldom, if ever, make Complaints, 'till an Indictment pinches them, or some Resentment stings them. And to show how willing the Surveyors are to favour the Inhabitants; and how unwilling these are to do their Work in the six Days allotted for that purpose: we find that the Surveyors have not only given the usual Warning for the six Days, but again for three Days more, and three Days after that, and still three further Days, and sometimes in the whole, eighteen Days, for the Inhabitants to do their Duty; so reluctant are they to it.

ASK the Surveyor, why they do not finish their Work in six Days, and the Answer is, that the Farmers had some extraordinary Business or Employment for their Teams; and they have promised to come out, and do their Duty: and it would be very hard to punish their Neighbours, according to the Severity of the Law; and besides say they, we are beholden to many of them for our Livelyhoods

Livelihoods; and generally speaking, in the Upshot, the Surveyors become Sponsors for the Farmers, that they will come out, and finish their Work.

AND thus the Time for mending the Roads, is whiled on, and protracted, 'till the last special Sessions for the *Highways* approaches; that is, towards Winter: and the Roads being unrepaired, necessitates a general Summons for the Surveyors, good and bad, sufficient and not sufficient, to bring a List of Defaulters; and then ensues a Summons to the Defaulters, to appear and answer for their Defaults: at which Times, there is such a Crowd of these Defaulters, that it is scarce possible for the Justices to go through, and determine their several Cases; at least not without divers after special Sessions.

I have known above four Score Defaulters, out of one single Parish. No Wonder then, that the Justices are not averse to the Prosecution, by Indictment; though they themselves are party, to it, <sup>s</sup> rather than to work through such a tedious and tiresome Examination, and Determination of so great a Number of Cases, as thus appear before them; intricated too, with a Pretence of the Surveyors, real, or feigned, that they forgot which were  
I the

the Days of Defaults, or the Days noticed in the Church.

AND after all, whose Fault is this? can it be fixed on any so well as on the delinquent, and offending Inhabitants? and are these the Men to be pitied, when indicted? or can Blame lie on any but themselves, if they are indicted or presented in Winter, since their continued Defaults, reach to it?

BUT to follow the learned Author in his Objections, I find his former general Objection branched into, insisted on, and enforced in this manner; 'That Indictments and Presentments for not repairing the Roads, are manifestly injurious to particular Persons, such as those who having in all things done their Duty, are nevertheless involved in the same Prosecutions, and charged with the Fines consequent upon them, promiscuously with those that are Defaulters.

To this Objection emerging and differently varied from the main one, to which I have given already a general Answer, I must be a little more particular; and I say, that I am not satisfied of the Truth of the Fact; for as will appear by and by. The Form of the *Levari facias* for levying of the Fines, is to this Time, not perfectly settled; so little has this sort of Execution



Execution been used, or Fines set upon Indictments and Presentments levied. And it is notorious, that when Indictments of a Parish, are made, the first thing usually done, is for the Surveyors to call all those who are behind-Hand in Duty, to come out and finish their Work; and when the Way specified in the Indictments, is repaired, they apply to two Justices, to view the Repairs; and the sufficiency of the Repairs being found upon View, and certified to the Quarter Sessions, the Sessions upon such Certificate, fine the Parish a Shilling or two, and then dismiss them: and this is by far the most usual, if not the only Way taken after the finding of Indictments, of the Parish; and in this Case, there can be no Injury to the particular innocent Persons, referred to in this Objection.

BUT it may still be said, that the discharging these Indictments, depends upon the Will of the Surveyors, in repairing, or not repairing, the *Highways*; and that without such a Reparation, certified by two Justices, to the Sessions, Fines will sooner or later, be set, and Process issue against the Inhabitants; the *Innocent* as well as the *Delinquent*.

AND now let us see how this Case stands, and whether the Performers of

their Duty, are here without Remedy ; and the Answer to this Objection, is, ' that by the 3d. and 4th. of *W. and M.* the Fine to be levied, is in the first ' Place to be levied on the Goods of one ' or more Inhabitants, and then two Justices, for the Reimbursement of those ' on whom the Distress is taken, are empowered to cause a Rate to be made, ' according to the Rules and Methods ' prescribed in the 43d. of *Eliz.* For the ' Relief of the Poor; which Rate being ' made, and then confirmed by two Justices at their special Sessions, shall be collected and levied upon the Inhabitants.' Since then, the Rate according to the 43d. of *Eliz.* is to be made by the Church-Wardens and Overseers of the Poor; and is usually done in Vestry. Here if Complaint is made, Redress may be had; if not, then upon Application to two Justices, at their special Sessions, whose Province it is to confirm the Rate, Relieif may there be had; and if there refused, then an Appeal lies to the Sessions.

3d. and  
4th. of  
*Wm. and  
Mary.*

WHEREFORE if Relieif is not obtained, it is the Fault of those, for whom this mighty Outcry is made, in neglecting to apply for it.

2dly. ' THE next Objection is, that neither ' Indictments nor Presentments, are attended

' attended with such Success, as to procure  
 ' the Roads to be *sufficiently* repaired; for  
 ' says the Author, those Parts of the Road,  
 ' as are out of Repair, must be particu-  
 ' larly specified in the Indictment or Pre-  
 ' sentment. And these Prosecutions be-  
 ' ing chiefly carried on, in order to oblige  
 ' the Parishes to repair such Parts of the  
 ' Roads, as then happen to be *worse* than  
 ' the *rest*, are not generally intended to  
 ' work a Reformation and Repair thro'  
 ' the whole Parish; and it is observable,  
 ' says the Author, there are some Parishes  
 ' that have Presentments or Indictments  
 ' almost perpetually hanging over their  
 ' Heads; which could not possibly be  
 ' the Case, if these Prosecutions were so  
 ' effectual for the Repairs of the Roads,  
 ' as some Persons *who are fond of Power*,  
 ' *do often strenuously, though erroneously*,  
 ' *insist upon.*

STRANGE Lust of Power, that should  
 move Justices of the Peace, to prosecute  
 their Neighbours, and partake in the  
 same Punishment with them, without  
 any the least Profit or Reward!

GENTLEMEN that spend their Time  
 and Money, that labour, and toil in the  
 Execution of their Office, for the Bene-  
 fit of the Publick, should be treated with  
 all the Civility and Tenderness imagin-  
 able

imaginable; be assisted, countenanced, and encouraged; and Mistakes or Faults (not tainted with Corruption) should be winked at, and excused.

BUT the contrary Practice and Usage prevailing, is the Cause why so many named in the Commission, refuse to act; and those that are *in*, are desirous (consistently with the Oaths of Office) to be out of it.

BUT if this learned Author is in the right of the premised Objection, against the Prosecutions by Indictment and Presentment, it is some Apology for him.

WHEREFORE let us see if these Processes, are so inadequate and incompetent as he alleges.

AND I say to the first Part of the Objection, that it does not at all relate to, or affect the *Indictment or Presentment*, given by Law; for these in the Constitution or Nature of them, extend, or may extend, to all the Parts of the Roads unrepaired, universally: and if the Indictment or Presentment, comprehended every part of the Road, that is out of Repair, the Objection ceases; and which in Reality, is an Objection (if any) against the Indictors or Presentors; not against the *Indictment or Presentment itself*.

SUPPOSE



SUPPOSE the Parish of (A) for the promoting of their Commerce, and to make their Ways clear for the Access of the King's Subjects to come and traffick with them, compleatly repair their Roads; but by Reason of the ruinous State of the Roads in (B) the next adjoining Parish, they are barred and prevented from attaining the desired Success, and Effect; is it not natural, and does not the Reason and Policy of the Thing, force them to indict the Inhabitants of (B) for their Default? and if in Consequence of that Prosecution, the Roads of (B) are in that part amended, is there not so much Benefit gained? so much Good done? and shall no Good be done, because all as suggested, or supposed, cannot?

AGAIN suppose other Parishes follow the same Example of (A) and prosecute (B) for the like Offence; and moreover if a Justice presents the Inhabitants of (B) for other Parts of the Roads, shall we forego and refuse so much Good done to the Roads, because there is not more done? stay 'till the next Year, and perhaps the rest of the *Highways* may be compleatly repaired, by the Fear the Inhabitants will have of other Indictments.

BUT it seems Indictments and Presentments are perpetually hanging over the Heads of the Parishes.

THE

THE more is their Shame, and Reproach! obstinate Offenders of this Kind, ought to meet with the Iron Hand of Justice, and be punished by the Severity and Rigour of it, without Pity; and perhaps the Reason why the Parishes suffer these Indictments to be impending upon them, may be, because the Fines imposed at the Sessions, are too moderate; and therefore when a motion was made in the King's Bench, for an Information against the Parish of *Asby*, in the County of *Liecester*, for not repairing their Roads, *Justice Fortescue* took Notice of the Smallness of these Fines, and said, that there was great Reason for granting Informations, because as the Charge of the Prosecution was greater in the Crown Office than on Indictments, it would have a proper Effect in compelling the Inhabitants to repair their Ways. But as this Doctrine tends to introduce more Expences than what attends Prosecutions by Indictments, I am apt to think, that the Inhabitants whether culpable or not, will like this Method of proceeding less than the other, as also the Author of the Treatise for avoiding this accumulated Charge, may think it not amiss, that Informations as well as Indictments be taken away by an express Law.

Hillary.  
13. Geo.  
2d. the  
King  
against the  
Inhabi-  
tants. of  
*Asby*.  
Sessions  
Orders  
adjudged,  
B. R.  
381.

It is said too, ' That the Allowance  
 ' of Presentments and Indictments, is Page 6.  
 ' one cheif Reason why the manifold  
 ' Laws made in Order to compel the  
 ' Surveyors of the publick Roads to per-  
 ' form their respective Offices faithfully,  
 ' are in a Manner become uselefs and  
 ' neglected, and that the most just and  
 ' most effectual Way to have the pub-  
 ' lick Roads kept in good and sufficient  
 ' Repair, is to oblige the Surveyors to  
 ' do their Duty.'

SURELY this Author has forgot what  
 he has so often said of their Poverty ;  
 and allowing this to be, as it generally  
 speaking is, the true State of the Case,  
 what can the Justices do ? If you say,  
 levy the Forfeitures incurred, I ask, upon  
 what shall they be levied ? And the An-  
 swer will be, upon their Goods ; but  
 they have none ; and when they have  
 been summoned to shew Cause why  
 their Forfeitures should not be levied,  
 they answer, that they are very poor ;  
 that they are no Scholars, cannot write  
 or read ; don't understand the Import of  
 the Charge delivered them ; and, if the  
 Forfeitures are distrained for, they are  
 ruined ; insisting upon it, that the Parish  
 have done wrong in choosing such as are  
 so unfit for the Office : and the Justices  
 being sensible, that what the Men say is  
 K true,

true, and that if a Distress was made, it would cripple and disable them from following their Business, and, in all Likelihood, would bring their Family, or Part of them, upon the Parish. It raises Compassion in the Justices, and a Reluctancy to execute the Rigour of the Law; or suppose, however, that they did break through all Tenderness to these Surveyors, especially if found to be obstinate, and raise the Penalties of Five Pounds inflictible on them by the Statute, what will such a Forfeiture, when raised, avail towards the compleat Amendment of the Roads? Will all the Roads be repaired by such a Levy? If not, how then are they to be amended? For, according to the System in the learned Author's Treatise, Indictments and Presentments, by which the Inhabitants might be compelled and inforced to repair them, are to be taken away by an express Law, and yet the original Fault, which taints the whole Mass, is in the Inhabitants who choose such Sort of Surveyors, such mean illiterate Fellows, as are incompetent to their Office; and then all the Fault and Punishment is at last to be cast upon these poor Fellows and themselves to be free and exempt from it.

AND



AND this may suffice as to the objective or complaining Part of the Author's Treatise.

BESIDES which, there are several *Propositions* made for the better and easier repairing the *Highways*: And herein I honour the learned Gentleman, and think any Persons that propose a Way tending to so useful a Purpose, should be highly esteemed; for some or other may, in such Attempts, hit of a perfect Way to effect it; and whoever does it, deserves the utmost Regard and Honour from the Publick; and, if I cast in my Mite, I hope it will be considered as a benevolent Essay or Proffer to that End, to be rejected, accepted, or regulated, as shall be most meet.

AND though I do not, and would not be thought to reject the Proposals contained in the Treatise, but leave them to the Judgment of others; yet, nevertheless, as the Methods proposed by the Author to be taken, subsist greatly upon a Supposition of *Informations* to be given to the Justices.

I beg Leave to say (and am sorry for it) that the Foundation will fail him, for the Name of an *Informer* is now become so odious, that there are none such, except it be the Officers of the *Excise, Customs, &c.* who have for Ex-

cuse, that they are commanded by their Superiors, and must lose their Places, if they don't inform ; and, yet we all remember the Time, when the first Law passed for putting an End to the excessive drinking of Gin, that these Officers were treated by the Mob, in the same Manner as they discipline Pick-Pockets. It is true, however, that particular Men injured in their Property, Liberty, or Persons, will inform ; but these Informations have the soft Term of *Complaints*, but let the Publick be injured ever so basely, there is then no Informer ; and, yet a strange Frenzy has seized the People for Informations in the common printed Papers, the Channels and Conveyances of Scandal throughout the Kingdom ; these are received greedily, though honest Men are undone by the Lies scattered abroad in them, without the least Reparation.

AND now it may be asked, What Method do you propose to be taken for the better repairing the *Highways*? In order to deliver my Opinion upon this Question (intirely submitted and subjected to others) let me have Leave to answer it by another Question.

SUPPOSE one Gentleman was bound by his Tenure, to amend all the Roads in the Parish, and was to forfeit his  
Lands,

Lands, or a great Penalty if he did not, What Method would he take? I may venture to say, he would not send for a Medley and Motley Body of People out of every Corner of the Parish, and whom he knew before-hand to be averse to the Work, but would annually provide a Sum of Money against the Season of the Year, to hire, in the most husbandly Manner, Teams and Labourers to effect the Work. He would by himself, or some proper Agent or Deputy, look after the Teams, and see that the Carts were filled to a proper Mark or Gage, and that the Carters and Labourers earned their Money, or else he would turn them off. He would likewise task Men to keep the Roads dry, and as any Parts of the Roads were going out of Repair, he would mend them before they were too far gone, and in short he would be continually having an Eye to cure any present Evil, and not to lay down a Parcel of Gravel, and then leave the Roads to take care of themselves.

AND now suppose the Parishes were obliged by a new Law, to raise a Rate annually for the Repair of the Roads, under the Appointment, Regulation, and Direction of the Quarter-Sessions, with proper Rules for the hiring Teams and Labourers, as also for the Appointment  
of

of Surveyors to see the Carts filled, the Work well performed, and the Roads kept dry: Would not this be as provident, prudent, and husbandly, as when the like Work is done by one Gentleman? Yes, and in this case too, the Inhabitants, if employed, would receive back the Rate they advanced, in Recompence for their Hire, and in Excuse for their six Days Statute Work. And here there can be no room to murmur, unless any of the Inhabitants are not hired; and if so, it is probable, they are rejected as idle and lazy, or exacting Fellows; and even then, as they are not to be called out, as before, to their six Days Statute Work, those very Days employed in other Work, will compensate their Contribution to the Rate.

BUT then, Indictments and Presentments must be kept up, as the last Resort and Reserve against unforeseen Arts and Devices, to get out of, evade, or elude the Provisions made by a Law to raise the proposed Rate, or in case of Disobedience thereto. And methinks the two Clauses in the Acts of Parliament, the one in the 3d. and 4th. of *William and Mary*, C. 12. and the other in that of the 1st. of *George* C. 52. bid fairly for something that is very similar, or analogous to the Method now proposed.

That



‘ That of King *William* and Queen  
‘ *Mary*, imports, that if the Quarter-  
‘ Sessions shall be *fully satisfied* that the  
‘ *Highways* cannot otherwise be sufficiently  
‘ amended, by Means of the Laws now in  
‘ Force; in all such Cases, one or more  
‘ Assessment or Assessments, limited by  
‘ that Act, should be made on all Per-  
‘ sons usually rateable to the Poor, and  
‘ should be levied, collected, and allowed  
‘ by such Persons, and in such Manner,  
‘ as the Justices by their Order at such  
‘ Sessions, should direct and appoint, and  
‘ the Money thereby raised, should be  
‘ employed and accounted for, according  
‘ to the Orders and Directions of the  
‘ said Justices, for and towards the  
‘ amending, repairing, and supporting  
‘ such *Highways* from Time to Time,  
‘ as need should require, with Powers  
‘ to levy the Rate upon the Non-payers,  
‘ but subject to an Appeal.

AND here, if Liberty was given to  
the Quarter-Sessions, to cause a limited  
Rate or Rates to be raised annually, with  
like Powers as above, not restraining  
them from raising it, unless they are sa-  
tisfied that the *Highways* cannot other-  
wise be sufficiently amended by Means of  
the Laws in Force. This would coin-  
cide and concur with my Proposition;  
but, as it stands at present, it keeps on Foot  
the

the six Days Work, between such a Time and such a Time of the Year ; which, in my Way of thinking, would be unnecessary, if not improper, and perhaps for some such Reason ; the Act of the 1st. Geo. I. carries the Provision further, by enacting, ‘ That upon *Application of the Surveyors of the Highways to the Quarter-Sessions*, if the Justices there should be satisfied that the *Highways* could not be repaired as they ought to be without further Power than hitherto given, they might, if they saw fitting, cause an Assessment, not exceeding Six-pence in the Pound, to be made, *though the Six Days Work had not been performed.*’

THIS Act, however, is incumbered with a Condition of the *Application of the Surveyors* to the Sessions, and is adapted to an occasional Defect of Repairs, not otherwise amendable than by such a Rate ; whereas my Proposal makes the Rate to be annual, without any such conditional Application.

I HAVE already mentioned my humble Opinion, that whatever Alteration there is in the Laws relating to the *Highways*, yet that the Laws, as to Indictments and Presentments, for the Reasons above, should stand ; and, if this should be thought necessary, then I must

must, according to my primary Intention of pointing out some of the Difficulties that Justices meet with in the Execution of their Office, open one that occurs in the Form of Proceedings in order to the Levying of Fines upon Indictments and Presentments; which, perhaps, may serve to convince the Author of the above-mentioned Treatise, that the Path to this End has not yet been perfectly beat out, nor therefore such Fines *levied* as supposed.

THE Case from whence this Difficulty sprung, is as followeth.

A CERTAIN Justice of the Peace, upon the first Day of the Quarter-Sessions, presented the Inhabitants of the Parish of (B) for their not having repaired their *Highways*; and the Presentment was read before, and explained to the Jury of Hundredors sworn for that Hundred in which the presented Parish lay, and a Fine was by the Court assessed on the Parish for their Default.

‘ This Assessment was grounded on  
 ‘ the 5th. of *Eliz.* C. 13. empowering  
 ‘ every Justice, upon his own proper  
 ‘ Knowledge, in the open General Sessi-  
 ‘ ons, to make Presentment of any *High-*  
 ‘ *way* not sufficiently repaired; and en-  
 ‘ acting, that such Presentment should  
 ‘ be of the same Force as if presented,

L

found,

‘ found, and adjudged, by the Oath of  
 ‘ twelve Men : And that the Justices of  
 ‘ the Peace of the County, should, *im-*  
 ‘ *mediately at the said General Sessions,*  
 ‘ *have Authority to assess such Fines as to*  
 ‘ *them, or two of them (Quorum unus)*  
 ‘ *should be thought meet ; saving to all*  
 ‘ *Persons concerned, their lawful Traverse ;*  
 and declaring, that the Fines so assessed,  
 should be estreated by the Clerk of the  
 Peace, and levied as by the 2d. and 3d. of  
*Philip and Mary*, is directed.

AND, by the 3d. and 4th. of *William*  
 and *Mary*, Cap. 12. Sect. 14. instead of  
 estreating these Fines into the *Exchequer*,  
 it is enacted, ‘ That the same be levied  
 ‘ and paid into the Hands of the Sur-  
 ‘ veyors, to be applied towards the  
 ‘ Amendment of the *Highways*.’

AT the Close of the adjourned Sessions,  
 when the Presentment was made, the pre-  
 sented Parish was called forth in Court  
 to come and traverse the Presentment ;  
 but they did not appear ; and then it  
 was thought by the presenting Justice, that  
 Writs or Precepts for the levying the Fine  
 on the Inhabitants would issue of Course.  
 But the Clerk of the Peace of the proper  
 County having very prudently, upon this  
 Occasion, consulted with other Clerks  
 of the Peace of neighbouring Counties,  
 found, that they were of Opinion, that  
 a com-



a common *Venire facias* should issue, and be served upon the Parish, before any Writ or Precept issued to levy the Fine. They said, no Man ought to be condemned without having an Opportunity to be heard; and as a Traverse was saved to the Parish, they ought to be summoned *to traverse*.

AND to the Judgment of the Clerks of the Peace, and the Practice that had (as said) ensued upon it, the presenting Justice, though reluctantly and unconvinced, yielded, and a *Venire facias* issued, returnable the next Sessions: Before which Time the Matter was accommodated very opportunely for the Justice; for, if it had not been so, he would at last have been at a Loss how to levy the Fine, it being lately reported to him, there was no Form of a *Levari facias* in this Case to be found in the Offices.

BUT since the presenting Justice differed with the Clerks in Judgment, he thinks it proper, upon this Occasion, to explain his Mind, and give his Reasons for not concurring with them; to the Intent, that when the Difficulties attending the Prosecution on the Justice's Presentment, according to the Method prescribed by the Practisers come into view, the same may (if the Judgment of

others fall in with that Method) be at least of this Use, to induce (as it is hoped) the Legislature to apply a proper Remedy to remove those Obstacles, and clear the Way to a speedy Reparation of the publick Roads.

IN doing of which, I shall not enter into a Dispute or Question about the *Venire facias*; or whether, instead of *that*, the first Process against such a diffused, unincorporated Body as the Inhabitants are, should have been by *Pone*, or by Attachment, according to the Entries in the Margin: But, taking it for granted, that the *Venire facias* was the proper primary Process, I must enquire what the next Process is, in case the Inhabitants are sturdy, and will not appear. And first, it must be noted, that whenever the *Venire facias* issues, it is not to be returnable till the following Sessions; and then, if the *Inhabitants* don't appear, a *Distringas*, to compel them, as I think, is the next Process returnable the following Sessions; and if the Inhabitants still make Default, then a second *Distringas* must issue to appear the Sessions after that, and so *Distringas* after *Distringas*, in *infinitum*, till they do appear and traverse, for it is absurd to say, they can traverse before they appear. And he that will travel through such

Coke's Entries, 348 to 351.

Lilly's Entries, 295.

Cliff's Entries, 375.

377. 382.

Office Cl. Affize and Peace, 82. Lambard's Eiren. Tit. Process.

such a Stage and Circle of Processes, persecuted all the while with the Glamour and Malignity of the Inhabitants, and at last be at the Expence of trying the Traverse, must have insuperable Virtue, and Fortitude of Mind, and have an affluent Estate to bear the Charge of these Proceedings, and *withal*, be endued with superior Patience, to endure to see the Roads so long ago presented by him, to remain still in the same ruinous and founderaus, or impassible State, they were in, when he first lodged his Presentment. But it may be said, though this is a dilatory and tedious Process, yet, as the Law requires it, we must submit to it, rather than condemn any Man, without allowing him an Opportunity to make his Defence—Agreed.

BUT the Question is, whether, in the Case before us, the Inhabitants of (B) had not that Opportunity as well before, as when they were called forth at the *adjourned Sessions*, and that they had such an Opportunity: I reason in this Manner.

IT appears in the Law Books, that at the County Leets, or View of Frankpledge, in the Sheriffs Tourn held in every Hundred, the Resiants there (some few Men only excepted) were to appear in Court; and, when they appeared according

Coke's 2.

Inst. 70,

71. Brady's Add.

Dalton's

Gloss. 55.

Sher. 471,

472. 2d.

Hawk. P.

c. 56.

Crompt.

Inst. Tit.

Vic. 137.

others fall in with that Method) be at least of this Use, to induce (as it is hoped) the Legislature to apply a proper Remedy to remove those Obstacles, and clear the Way to a speedy Reparation of the publick Roads.

IN doing of which, I shall not enter into a Dispute or Question about the *Venire facias*; or whether, instead of *that*, the first Process against such a diffused, unincorporated Body as the Inhabitants are, should have been by *Pone*, or by Attachment, according to the Entries in the Margin: But, taking it for granted, that the *Venire facias* was the proper primary Process, I must enquire what the next Process is, in case the Inhabitants are sturdy, and will not appear. And first, it must be noted, that whenever the *Venire facias* issues, it is not to be returnable till the following Sessions; and then, if the *Inhabitants* don't appear, a *Distringas*, to compel them, as I think, is the next Process returnable the following Sessions; and if the Inhabitants still make Default, then a second *Distringas* must issue to appear the Sessions after that, and so *Distringas* after *Distringas*, *in infinitum*, till they do appear and traverse, for it is absurd to say, they can traverse before they appear. And he that will travel through such

Coke's Entries, 348 to 351.

Lilly's Entries, 295.

Cliff's Entries, 375.

377. 382.

Office Cl.  
Affize and  
Peace, 82.  
Lambard's  
Eiren. Tit.  
Process.



such a Stage and Circle of Processes, persecuted all the while with the Glamour and Malignity of the Inhabitants, and at last be at the Expence of trying the Traverse, must have insuperable Virtue, and Fortitude of Mind, and have an affluent Estate to bear the Charge of these Proceedings, and *withal*, be endued with superior Patience, to endure to see the Roads so long ago presented by him, to remain still in the same ruinous and founderaus, or impassible State, they were in, when he first lodged his Presentment. But it may be said, though this is a dilatory and tedious Process, yet, as the Law requires it, we must submit to it, rather than condemn any Man, without allowing him an Opportunity to make his Defence—Agreed.

BUT the Question is, whether, in the Case before us, the Inhabitants of (B) had not that Opportunity as well before, as when they were called forth at the *adjourned Sessions*, and that they had such an Opportunity: I reason in this Manner.

It appears in the Law Books, that at the County Leets, or View of Frankpledge, in the Sheriffs Tourn held in every Hundred, the Resiants there (some few Men only excepted) were to appear in Court; and, when they appeared according

Coke's 2.

Inst. 70,

71. Bra-

dy's Add.

Gloss. 55.

Dalton's

Sher. 471,

472. 2d.

Harok. P.

c. 56.

Crompt.

Inst. Tir.

Vic. 137.

According to their Things, twelve at the least of the most sufficient Freeholders within the Hundred were first to be impannelled and sworn by the Sheriff, to enquire of, and present all Things there to be enquired of; and this in Conformity to the mandatory Part of the Sheriff's *Venire facias*, directed to his Bailiff of the Hundred, to summon Twenty-four good and lawful Men of the Hundred, to do what to them, on the Part of the King, should be enjoined.

*Dalton's Sher. 475.* After the impannelling this Jury, a second Jury was taken out of the rest that appeared, and these were to present or give their Verdict to the first Jurors, of such Things as should be given them in Charge.

AND when these had delivered in their Presentments to the first Jury, and the first Jury were agreed on their Verdicts, and delivered them to the Sheriff, if there was any Presentment amongst them of Felony, it was given to the Sheriff privily, the rest openly. The first of these Juries was the Grand Jury for the Hundred, where the Tourn was held; and that Part of the rest of the Suitors that appeared and were afterwards sworn, were the Presentors to the Grand Jury.

THESE Presentments or Indictments at the Tourn or *County Leet*, were not to be

be past but by twelve Jurors at the least, <sup>13. Edw. 1. C. 13.</sup>  
 who were to put their Seals thereto; <sup>Dalton's</sup>  
 and if the Verdicts were thus past, the <sup>Sher. 472.</sup>  
 Sheriffs might proceed to imprison as <sup>2 Inst. 387.</sup>  
 formerly done; and to prevent Em- <sup>2. Hale's</sup>  
 bezzlements, the Sheriffs were to take <sup>Hist. P.C. 152.</sup>  
 them by Roll indented, whereof one  
 Part was to remain with the Sheriff, and  
 the other with the Indictors, so as one of  
 the Indictors had one Part to shew to the <sup>1. Edw. 3.</sup>  
 Justices when they came to make De- <sup>Stat. 2.</sup>  
 liverance. <sup>C. 17.</sup>

UPON these Presentments, antiently,  
 the Sheriffs might proceed to hear, and  
 determine Misdemeanors, Offences, and  
 Felonies (some few Cases excepted)  
 and he was to do Execution thereon.  
 But because of notorious Corruptions of  
 the Sheriffs and their Officers (stated at  
 large in the Statute) it was enacted,  
 ' That they should not attach, arrest, <sup>1. Edw. 4.</sup>  
 ' or put in Prison, nor levy any Fines <sup>C. 2.</sup>  
 ' or Amerciaments of any Persons in-  
 ' dicted, or presented before them in  
 ' their Tourn, but should *bring, present,*  
 ' *and deliver all such Indictments and*  
 ' *Presentments to the Justices of the*  
 ' *Peace, at their next Sessions,* who should  
 ' have Power to award Process upon  
 ' such Presentments and Indictments, in  
 ' like Form as if the same had been  
 ' presented before them, and withal to  
 arraign,

‘ arraign and deliver all such Persons for  
 ‘ indicted and presented before such  
 ‘ Sheriff.’

Bro. Abr.  
 2. Part, 28,  
 59.

AND if the Sheriff delivered an Indictment or Presentment taken before him by Roll indented, according to the above Acts, it became of Course an Indictment at the Sessions.

THIS Statute bids fair to shew the transferring the Powers of the County Leet or Tourn into the Sessions of the Justices, and it is easy to see what a vast Tide of Wealth was diverted and cut off from the Sheriffs by it, as the same took away their Power of Imprisonment, fining, amercing and trying Prisoners presented or indicted before them, *consigning them to the Justices of the Peace.*

BUT yet the Sheriffs had one Shift more taken Notice of, in the 1st. of *Richard. III. C. 4.* and which by that Statute, was effectually barred.

2. Inst. 72.  
 Dalton's  
 Sher. 485.

THE Sheriffs being thus shut out of their Powers, and the consequent Emoluments and Profits arising from them; the Court of the Tourn or County Leet therefore was neglected, and by Degrees deserted; so as in Lord *Coke's* Time, there was scarce any Thing left but its Name. And as all the Sheriffs Powers were lopt off, it is obvious that wherever those Powers went, there the Practice would



would follow, and consequently as the same were transferred to the Justices of the Peace at the Sessions ; there the Customs and Practice of the Tourn would naturally fall in and center, as far at least, as was consistent with the other Powers of the Justices, and with the Difference of the Sheriffs taking the Indictments within the several Hundreds from the Hundredors successively one after another, and the Necessity the Sessions were under of taking them all at once.

UPON this Foundation (as I conceive) the ancient Precept for summoning a Quarter-Sessions was framed, and was made, as far as the Nature of Things would allow, conformable to the Practice of the Tourn or County Leet ; and hereby twenty-four Freeholders were to be summoned to the Sessions, as a first or grand Jury for the Body of the County ; and such a Jury as this, as it is to serve for the whole County (the Aggregate of all the Hundreds) may be properly considered, as the Representatives of all the first or grand Juries of the separate Hundreds.

And as formerly, in the Tourn, all the Inhabitants (a few excepted) served, or were liable to serve, as presenting Jurors in their respective Hundreds ; at-

M

terwards

terwards, instead of that vast Multitude, twenty-four Persons only, according to the above-mentioned antient Precept, were sent, for out of every Hundred to come at once to the Sessions; and, according to the modern Practice, twenty-four are summoned, not out of every Hundred, but out of such a Number of Hundreds, as lie near, or are adjoining to, and in the Neighbourhood of the Town, where the Sessions is held, and these twenty-four Jurors out of each Hundred, may very properly be considered as the Resiants and Representatives of those Hundreds out of which they come; and, by these Means, the useful Practice of the Tourn or County Leet, is with less Expence and Inconvenience, and with more Advantage to the Publick, supplied. And, as the Sheriff in the Tourn, when Presentments were made to him by the Tithings, delivered them to the grand Jury there; so in like Manner the Justices of the Peace, agreeably to the Sheriff's Practice at the Tourn, do now, when the Presentments of the Hundreds are made to them at the Sessions, send the same to the grand Jury for the Body of the County, in which the grand Jurors of the several Hundreds at this Day unite,  
and

and where all the Powers of the Tourn center, and where they are all absorpt.

HENCE it may justly be inferred, that as the Resiants of each Hundred were represented by their Hundredors, when at the Tourn, so, by the same Reasons, they are alike represented at the Sessions when present there.

To fortify this Reasoning, it must be observed, that several Hundred Courts were antiently parted off from the Counties, and several Leets were also carved out of the County, and so became particular Franchises.

BUT great Inconveniencies arising from this Excision by the 2d. of *Edw. 3. C. 12.* it was enacted, that Hundreds should not be separated from the Counties.

AND, by the 13. and 14. of *Edw. 3. C. 9.* in Time, a little after the Justices of the Peace began to take their Rise, it was enacted, that all Hundreds (that is to say, all such as had not been granted out in Fee) should be rejoined; and they are accordingly become Part of the Shires, and under the Obedience of the Sessions.

MOREOVER, the petty Constables were in old Times, appointed yearly by the Sheriff in his Tourn.

*Ld. Bacon,*  
Vol. 4. P.  
57. Cumb.  
416. *Dal-*  
*ton's Sher.*  
484.  
1. *Salk.*  
175.  
2. *Salk.*  
502.

BUT afterwards, and now, these petty Constables are commonly appointed in the Leet or Law-day of that Precinct where they dwell.

2. Hawk.

65. Black.

87. Dal-

ton's Sher.

484.

AND if none are appointed at the Leets, they may be appointed at the Sessions, the County, or supreme Leet.

AND in case any petty Constable or Peace Officer should die, or go out of the Parish, two Justices were, by the 13th. and 14th. *Char.* 2d. C. 12. Sect. 15, impowered to make and swear a new one, until the Lord should hold a Court, or until next *Quarter-Sessions*, who were to approve of the Officers so made, or appoint others, as they should think fit; and if any Officer should continue above a Year in his Office, that then the *Quarter-Sessions* might discharge such Officer, and put in another, 'till the Lord of the Manour should hold his Court. And it was adjudged, *Pasch.* 4th. *Ann.* that high Constables, as well as petty Constables, might be removed; for the Justices at the Sessions were the best Judges of that Matter.

1. Salk.

150.

AND I find, by an Entry in an old Book, Edit. 1539. P. 49. (supposed to be *Fitzherbert's*) two Constables were put out of their Office, and two new ones put in; and the Writ or Precept for this Purpose is directed to the Sheriff,  
and



and high Constable, and is in the King's Name, but tested by two Justices most probably at the Sessions.

AND I don't wonder at this; because by an Act made (not in Print) 6. *Edw.* 3. it was enacted, ' That Justices should be appointed to keep the Peace; and that they should have Power to appoint Constables for taking Malefactors.'

6. *Edw.* 3.  
Ro. Par.  
N. 5. & 6.  
*Pryn.* Eir.  
Rediv. P.  
5.

AND as to the Constables for the Hundreds, these are constantly chose at the Sessions, and sworn there, or by Warrant from thence.

*Dalton's*  
Just. Ch.  
28. of Con-  
stables.  
Cr. Circuit  
Comp. 56.

AND since the principal or chief Constables must be chosen at the Sessions, and the petty Constables may be chosen there; for the necessary Preservation of the Peace, and also since both the one and the other are obliged to attend at the Quarter Sessions, as, and when summoned thereto; and who are, by the Duty of their Offices, to make Presentments of Misdemeanours to the Sessions, as was formerly done at the Tourn now extinct.

*Dalton's*  
Sher. Tit.  
Tourn.  
472.

It is evident, that the Sessions is in all Respects the supreme and only existing Leet for the County, comprehending in it all the Power of the Tourn, and where all the Inhabitants of every Hundred, if they are not *actually*, yet are *virtually*

1. Salk.  
175.

Office Cl.  
of Affize  
and Peace,  
187.

*virtually* present by their own Representatives the Hundredors; and if not so, yet as the Constables for the Hundreds, and the petty Constables for their Correlatives, the Parishes are present at the Sessions when Presentments of the *Highways* are publickly read as usual at the Sessions, and read also there to the Hundredors of that Hundred in which the presented Parish lies: This surely may be deemed a sufficient Notice of itself, without any *Venire facias* to the Inhabitants to appear and traverse the Presentment; especially considering, that these very Men (the Constables) were those that were entrusted with the Receipt of the Fines set upon Defaulters on the *Highways*, applicable to the repairing those Ways.

IF the Inhabitants of the Parishes are not supposed to be present at the Sessions actually, or by Representation, nor by their Constables, I desire to know to what Purpose the Presentments of the Justices are to be brought into *open* Court, and there *read*? If it be read to those concerned as *present*, it is Sense; but if not supposed to be *present*, it is Nonsense; it is just the same, as not being read at all.

AGAIN; Presentments at the Lords Leets for Offences within their Jurisdiction

dition are not traversable ; but if Presentments are out of their Jurisdiction, as for Instance, for Defaults in Bridges and Highways, these are traversable, but the Traverse in this Case must be taken the first Day.

Sheppard  
of Leets  
21. 22.

AND it is absolutely necessary, in case of dangerous Holes in Bridges or Highways, that a speedy Remedy be applied ; and therefore the 5th. of *Eliz.* as a supplemental Provision to that of the 2d. and 3d. of *Philip* and *Mary*, enacts, that any Justice may present any Defects of Repairs in the Highways at the Sessions ; and they are authorized immediately the same Sessions to fine the Offenders, which, according to the Necessity that a ruinous Road requires for Dispatch in repairing, seems adapted for that Purpose, and consequently will not bear the Delay of a *Venire facias*, and *Distringas* upon *Distringas* for a Time indefinite ; and to talk of a *Venire facias* to traverse a Presentment, after a Fine is set (which is supposed to be the End of the Law, as founded on a preceeding Judgment) is the same as to talk of a Plea to answer after Judgment is given, and the Duty or Damages ascertained.

THE only sensible thing therefore as I conceive to be done (if it can be supposed

posed that the Parish has not had sufficient Notice of the Presentment after publishing it in Court) would be immediately, upon the reading the Presentment, to order the chief or petty Constable to give the Surveyors Notice of it, that so the Inhabitants, may, if they think fit, appear and traverse the Presentment, before the Close of the Sessions, or else to signify to them, that a Fine would be set.

ADD hereto that in the preceding Clause of the same Statute (of the 5th. of *Eliz.*) the Supervisors are required to present all Defaults and Offences in the *Highways* to the next Justice, who is to certify the same to the Sessions: And it is enacted, that the Justices of the Peace of every County where the Default is, should have Authority *immediately to enquire* of such Defaults, and to assess such Fines, as they, or any two of them, (*Quorum unus*) should think meet.

HENCE I infer, that if the Surveyor's Presentment is to *be inquired of the same Sessions*, that of the Justices, is more so; and, consequently, if a Traverse is taken, it might be *inquired into, and tried the same Sessions*, by Adjournment for fifteen Days, and the Exigence of the thing demands it.

Cumb.  
235.

AND



AND this general Rule is laid down in Dalton's Chapter of the *Highways*, and in a valuable Book, intituled, *The Office of Clerk of Assize and Peace*, Page 177. That if the Parties presented, be present in Court, they may traverse; but if they don't traverse, the Justices may at the same Sessions, assess and fine, and this in the Absence of the Parties without calling them to it by Process, which manifestly indicates and points out the Necessity of the speedy Reparation of the *Highways*: But if the Way presented is not in such absolute Necessity of an instant Reparation, the Sessions, in this Case, have set the Fine conditionally, that the Repairs be made by a limited Time; but still, in this Case, the Fine is set the same Sessions, without staying *Keyling*, 'till an after Sessions, for a Traverse, and <sup>34</sup> is to be let loose, if the Roads are not repaired by the limited Time.

Allow me, before I quit this Subject, to observe, that the Proceedings upon Indictment to call in the Inhabitants to traverse, ought to be (in my Opinion) the same with those of the Presentment by Justices, and therefore, in that Case, as well as this, a *Venire facias* should issue to summon the Inhabitants to traverse the Indictment; and, in Default of Appearance, then the like Ramble after

N

by

*if necessary*

by *Distingas* upon *Distingas* should ensue 'till they did.

BUT if it be objected, that, in the Case of Indictment, the Court can lay their Hands upon any Inhabitant that happens to be in Court when the Indictment is brought in, and make him plead for all; I say, if this Practice is (as I believe it is not) warrantable and legal, it is equally so in the Case of Presentments by Justices.

THE above Reasons are not offered to recall what is done, but only to shew what Difficulties Justices of the Peace will meet with, if they take upon them to make any Presentments of this Nature, and in Hopes that the Legislature will think it proper to remove them, and not to suffer a Power granted to Justices to present the *Highways*, to be a Trap to catch and involve them in a lasting Pursuit of the Inhabitants with consequent Charges, leaving the *Highways*, all the Time *that* Round of Trouble is taking, in the ruinous Condition complained of.

*The next Thing that presents itself to Consideration, is that of the*

#### COUNTY BRIDGES.

ALL the County Rates mentioned in the Statute of the 12th. of Geo. 2d. C. 29. amongst which is the Rate for amending

amending *Bridges* and *Highways* three hundred Feet from either End of the *Bridges*, are thrown into one Tax and Collection, and these are to be paid out of the Poor's Rate ; and, in Default, to be levied on the Overseers by Distress.

But it is enacted, ' That *no Part of the Money to be raised* and collected in Pursuance of this Act, shall be applied to the Repair of any *Bridges*, until Presentments be made by the respective grand Juries, at the Assize, general Gaol Delivery, or general or Quarter-Sessions of the Peace, held for any County, of the Insufficiency, Inconveniency, or want of Reparation, of their *Bridges*.'

AND then the Justices have Power to contract for the Repairs, giving publick Notice.

EVERY Body must allow this to be a good husbandly and provident Act of Parliament, and well designed, to guard against any Imposition, or unnecessary or improper issuing of the publick Money.

BUT the Question is, whether this Act, which, in its Tendency, is to save the publick Money upon great Occasions, is not a little too straight in staying the issuing a small Sum of Money in

some little Repairs necessary, to stop a growing Evil.

SUPPOSE, for Instance, a small Quantity of Gravel is wanting to cover the Planking of a Bridge, or that a Plank or Pile was decayed, and fit to be taken out, and a new one put in, or an Hole in the *Bridge*, or in the *Highways* adjoining, necessary to be stopt and repaired, which if not done immediately would be worse, and more and more increase the Charge of Repairs if delayed.

Is it not reasonable then in such a Case, that the Surveyors of the *Highways* (who most certainly will never consent to bring a County Charge upon the Parish) should be impowered, with the Consent of one Justice of the Peace, to lay out a *small Sum* for this Purpose, and to deduct it out of the Quota of their Parish, payable to the Treasurer of the County for their County Rate.

The next Inquiry must be, what is the principal Cause of the breaking up the *Highways*.

And this, without doubt, must be assigned to the Weight, and consequently the Number of Horses that are used in travelling Carts, Waggon, and Timber-Frames.

MANY



MANY and various Laws have been made to guard against this Evil, so many indeed, and with such total or partial Repeals, Renewals, or Confirmations, accompanied with so many new or occasional Provisions, that the thorough Knowledge of them is almost a Study of itself, and, in the main Point, very difficult for a Justice to carry them into Execution, and whether upon this, or any other, and what Account, I know not ; the Carriers and Waggoners get clear of all, and without Fear or Shame, draw their Waggon, Carriages, and Timber-Frames, sometimes with seven or eight, and sometimes with more Horses, though not forced to it, by carrying a single massy Tree or Block ; and, by this enormous Weight and Force, the *Highways* are dug and ploughed up, and so will continue to be, if some further Provision be not made, the former not answering or producing the good Effect intended. The Difficulty I here touch upon, arises from the wording the Acts of the 5th. of King *Geo.* 1st. and those of the 14th. and 16th. of King *Geo.* the 2d.

By the first of these Acts it is ordained, ' That no *Waggon* travelling for  
 ' *Hire*, should go or be drawn with more  
 ' than six Horses, either at Length or in  
 ' Pairs,

Page 264. ' Pairs, or Sideways ; and that no Cart  
 ' travelling for *Hire*, should go or be  
 ' drawn with more than three Horses,  
 ' under the Pains, Penalties, and For-  
 ' feitures, following ; that is to say,  
 ' That if any travelling Waggon for  
 ' *Hire*, should go or be drawn with  
 ' more than six Horses, that the Owner  
 ' or Driver of such Waggon for *Hire*,  
 ' should forfeit and lose all the Horses  
 ' above six, with all their Geers and  
 ' Accoutrements, to the sole Use and  
 ' Benefit of any Person who should seize  
 ' or distrain the same.

' AND the like Penalty is given as to  
 ' any *Carts* drawn with more than three  
 ' Horses.

' AND it is enacted and declared, ' That  
 ' whoever should make any Seizure or  
 ' Distress for any of the above Penalties,  
 ' such Person should deliver the Horses  
 ' or other Things seized or distrained,  
 ' into the Custody of the Constable, or  
 ' some other Parish Officer of the same,  
 ' or the next Town or Parish where the  
 ' Seizure was made, till the Person who  
 ' made such Distress or Seizure should  
 ' make *Proof* upon *Oath*, before some  
 ' Justice of the Peace, of the Offence  
 ' committed ; and the Justice before  
 ' whom such Proofs should be made,  
 ' is required to issue his Precept to such  
 Officer

‘ Officer immediately to deliver the  
‘ Horse, or other Things so forfeited, to  
‘ the Seizor, to his sole Use.

‘ And in the same Act, the Breadth  
‘ of the Streaks, or Tire of the Wheels  
‘ of the Waggon and Carts, is fixed,  
‘ with the like Penalties in case of De-  
‘ fect, as above, if drawn with more  
‘ than the limited Number of Horses.

‘ AND there is a Penalty of Imprisonment, and Forfeiture of ten Pounds,  
‘ inflicted on all Persons hindering, or  
‘ attempting to hinder, with Force, the  
‘ seizing or carrying away of the for-  
‘ feited Horses.

‘ BUT there is no Declaration in the  
‘ Act, to whose use the Forfeiture of  
‘ ten Pounds is to be.

‘ AND there is an Exception in the  
‘ Act, of such Waggon and Carts as  
‘ are employed in or about several Sorts  
‘ of Husbandry; and, amongst others,  
‘ of such Carriages of Timber, Ammu-  
‘ nition, or Artillery, as should be for  
‘ the Service of his Majesty.

‘ THE 14th. of Geo. the 2d. extends  
‘ the Forfeitures given in that of the 5th.  
‘ of Geo. 2d. to all Waggon and Carts,  
‘ whether travelling for Hire, or not for  
‘ Hire, or in any Manner whatsoever.

AND enacts, ‘ That all Persons who  
‘ should offend against the said Act, or  
‘ this

' this Act, should for every Offence  
 ' (*being thereof convicted, upon Oath,*  
 ' *within the Space of three Days next*  
 ' *after such Offence, before any Justice of*  
 ' *the Peace of the County or Place where*  
 ' *such Offence should be committed, or where*  
 ' *the Offender should be*) severally forfeit,  
 ' be subject and liable to the respective  
 ' Penalties and Forfeitures in the said  
 ' Act.'

I PRESUME, it is an invariable Rule in  
 Law and Justice, that no Person be con-  
 victed of any Offence without a lawful  
 Summons or Notice, and Hearing, or a  
 Default after Summons or Notice.

If so, the Difficulty upon the Seizor,  
 and the Justice, is obvious and apparent.

ALL Proccs in this Case, down to  
 the Conviction and including it, must be  
 compleat and finished in *three Days* after  
 the Offence is committed ; and how can  
 this be effected ? The Seizor must, in  
 the first Place, carry and deliver the  
 Horse to an Officer of the Parish ; then  
 he must go away to such Justice as he  
 can find, and exhibit an Information in  
 Writing to him ; then the Justice is to  
 issue a Summons, or a formal Notice in  
 Writing, directed to the Offender, as  
 Owner or Driver of the *Waggon*, and  
 possibly by Name too, which may be  
 difficult to obtain ; and, while all these  
 Things



Things are doing, the Waggon, and its Driver, are gone out of the County, and the Owner or Driver not to be found, nor therefore to be served with a Summons or Notice; and so the limited Time is elapsed, and then no Conviction to be had, and perhaps an Action of Trespass commenced against the Seizor for a wrongful taking of the Horse.

THIS Clause, restraining the Conviction to *three Days* from the Commission of the Offence, being all included in a Parenthesis, I thought might be a mistake in the Print; and to be ascertained in this Matter, I sent to Town to search, and was told, that it agrees with the Record, *but is interlined*; which looks as if that Clause became a Part of the Act, in the Close of the Proceedings upon it.

BUT it may be said, that the Restraint to *three Days*, is eased or cured by the subsequent Words, in the same Clause, which declare, 'That the  
'Horses forfeited, should, for the Space  
'of three Days next after such Offence,  
'be and remain subject and liable to  
'such Seizure, for the Use and Benefit  
'of such Person as they would or might  
'have been, had they been seized in the  
'Fact during the Commission of the  
'Offence.'

BUT this does not in the least, ~~lieat~~ the Difficulty; for whenever the Horses are seized, whether in the Fact, or three Days after it, the same Proceedings must be had, and the Conviction past within the Space of *three Days*; which, as some Gentlemen have thought, is morally impossible.

AND therefore it is hoped, it may be set to rights in Parliament: And I humbly propose, that if the Limitation of the three Days, is continued, that then it should be lawful for the Seizor, to give or leave at the last Inn or Place where the Carrier lodged or baited (though the same be out of the County) a Notice or Summons signed by a Justice, and that this should be deemed a sufficient Service of the Notice.

AND as the Name either of the Owner or Driver of the Waggon, may not be known, I propose, that, instead of alledging the Horses to be the Horses of an Owner or Driver by Name, that it may be sufficient, in the Conviction or Order of Delivery, to say, *the Horses of an Owner or Driver unknown, when the Case is so.* And after all, as the Practice now is said to be, the Horses and Geers are repleviable at any Time before the Conviction or Order of Delivery; and if so, the Seizor may be surprized

prized into a tedious Suit before he is aware.

AND to conclude the Discourse on this Head, give me Leave to say, that when the Driver of the Waggon, or Timber Frame, comes to make his Defence, or rather Pretence, it is, that the Timber, is for the Service of his Majesty, which deserves some Explanation.

I HAVE now but one Thing more to add, and this concerns the *Charges of Prosecuting of Felons*, when it falls to the Share of a poor indigent Person.

WHAT must such a Man do? He has no Money, and he concludes, it is better for him to sit quiet with his Loss, than to be at further Charges; but if fortunately he lights on and seizes the Felon, to regain his Goods, and an Amends (including in it any other Loss by former Thieves) he chooses to compound with the Thief, rather than to pawn his Goods, to raise Money, to carry on a Prosecution of him: Or supposing the poor Man, having arrested the Felon by a Justice's Warrant, brings him before a Justice, by whom he is committed, and the Complainer bound to prosecute, what happens next? Most certain it is, that when the Assizes or Quarter-Sessions draw near, he comes to

## 98 CHARGES of PROSECUTION.

the Justice, makes a piteous Moan, says he has no Money to carry on the Prosecution, none to hire Horses, or bear the Charges of his Witnesses; and then he cries, Lord, Sir, what shall I do? Expecting either that the Justice that bound him to prosecute, should release him from his Recognizance, or be at the Expence of the Prosecution.

2. H. H. P. C. 282. ' THIS, says my Lord *Hales*, is a great Defect in this Part of judicial Administration, in that there is no Power to allow Witnesses their Charges; whereby many Times, poor Persons grow weary of Attendance, or bear their own Charges therein, to their great Hindrance and Loss.'

A lamentable Case! and I know not how this great and growing Evil may be cured, unless the Legislature will throw the Charges upon the Parish for the prosecuting any Felon committed by a Justice, so as the same exceed not for any one Felon fifty Shillings, or three Pounds; and so as the injured Person makes Oath before the committing Justice, that he is not worth ten or fifteen Pounds, as may be thought proper, all his Debts paid, his wearing Apparel, and Implements of Trade or Husbandry, excepted.



I HAVE now finished the Task I set myself; and am sensible, that great Candour and Benevolence will be wanting to cover and pass over the Blemishes, Faults, and Defects in the Work; and can foresee, that it will be objected, that as I undertook to treat of the Difficulties that cross upon the Justices in the Execution of their Office in several Cases of Importance to the Publick, yet I have not said any thing concerning the Laws for relieving or providing for the Poor, nor of any of the Difficulties occurring therein, which are as objected, as requisite to be considered, as any I have busied myself about.

If this Objection regards the political Plan, Frame, or System of the Laws concerning the Poor, I answer, that whatever my Thoughts may be as to the Necessity of a Revision of them, yet it does not belong to me, in my humble Sphere, to mount up to that Eminence, nor to presume to say any thing about it; and I freely own, I am incompetent and unequal to such an arduous Affair. But as to the Difficulties that arise from the Execution of these Laws, I think they are not so great but they may be struggled with, and conquered, especially if the Overseers of the Poor were either enjoined and enforced, by  
a stricter

a stricter and more severe Law than any now extant, to provide a *Stock of Materials* to set the poor People to work (a Provision, though necessary, yet generally wanting in Country Parishes) or else, that there was an *express* Power given the Justices, in Default thereof, to order pecuniary Relief: Nor would it be improper, in my Opinion, to enable the Justices to *summon and examine, upon Oath*, Intruders into Parishes, concerning their Settlements; for which, I don't find any *express* Authority given by any Act of Parliament.

*Consulite in medium et rebus succurrite fessis.*

VIRGIL.

## APPENDIX

# APPENDIX.

*Form of a Warrant for whipping, and then conveying a Vagabond of full Age, to his Settlement, if in the same County, where he is apprehended.*

to wit. **T**O the Constable [Tithing-man, or other Officer, as the Case may be] of the Parish [or Town] of *A.* in the County of *S.* to obey and convey.

And also to all Constables, and other Officers, whom it may concern, to receive and convey.

And to the Church-wardens, Chapel-wardens, or Overseers of the Poor, of the Parish [Town or Place, as the Case may be] of *B.* in the said County of *S.* or either of them, to receive and obey.

WHEREAS [*A. B.*] was apprehended in the Parish [or Town, or other Place, as the Case may be] of *A.* in the said County of *S.* as a  
Rogue

Rogue and Vagabond, *wandering and begging there* [or as the Case may otherwise be] and upon Examination of the said [A. B.] and of other Persons, if the Case is so taken upon Oath before me (which Examination is hereunto annexed) it doth appear, that he is a Rogue and Vagabond within the true Intent and Meaning of the Statute in that Case made and provided; and that his last legal Settlement is at the said Parish [or Town] of B. in the said County of S.

THESE are therefore to require you, the said Constable [or other Officer, as the Case may be] of the said Parish [or Town] of A. on the \_\_\_\_\_ Day of \_\_\_\_\_ at \_\_\_\_\_ between the Hours of ten and twelve in the Forenoon, publicly to whip, or cause some other Person to be appointed by you for that Purpose, publicly to whip the said A. B. and after such whipping, then to convey the said A. B. in the next direct Way to the said Parish [or Town, or other Place, as the Case is] of B. in the said County of S. and there to deliver him to some Church-warden, Chapel-warden, or Overseer of the Poor, of the same Parish [or Town, or Place] of B. to be there provided



provided for according to Law. And you the said Church-wardens, Chapel-wardens, and Overseers of the Poor, are hereby required to receive the said Person, and provide for him as aforesaid. Given, &c.

*N. B.* If the Case of the Vagabond differs from that above, the Pass must differ and vary according to the Directions prescribed in the Act, whereof the next Warrant will be one Instance or Example.

*A Warrant to whip, and then to convey the Vagabond to a foreign County.*

*to wit.* **T**O the Constable [Tithingman, or other Officer, as the Case may be] of the Parish [Town or Place] of *A.* in the County of *S.* to obey and convey.

And also to all Constables, and other Officers, whom it may concern, to receive and convey.

And to the Church-wardens, Chapel-wardens, or Overseers of the Poor, of the Parish [or Town or Place, as the Case may be] of *B.* in the County of *A.* or either *H* of them ~~them~~, to receive and obey.

P

WHEREAS

WHEREAS [*C. D.*] was apprehended in the Parish [or as the Case may be in the Town or Place] of *A.* in the said County of *S.* as a Rogue and Vagabond, wandering abroad, and lodging in Alehouses [or in Barns, Outhouses, or in the open Air] not giving a good Account of himself, and upon Examination of the said *C. D.* [and of others, if the Case is so] taken before me upon Oath (which Examination is hereunto annexed) it doth appear, that the said *C. D.* is a Rogue and Vagabond within the true Intent and Meaning of the Statute in such Case made and provided; and that he was born in the said Parish of *B.* in the said County of *S.* and hath not since obtained any legal Settlement.

THESE are therefore to require you, the said Constables [or other Officers, as the Case may be] of the said Parish of *A.* on the            Day of            at            between the Hours of ten and twelve in the Forenoon, publickly to whip, or cause some other Person to be appointed by you, publickly to whip the said *C. D.* and after such whipping, to convey the said *C. D.* to the Parish [or Town] of            that being the first Parish

Parish [or Town] in the next Precinct through which he ought to pass in the direct Way to the said Parish [or Town] of *B.* to which he is to be sent, and to deliver him to the Constable or other Officer of such first Town [or Parish] in such next Precinct, together with this Pass and the Duplicate of the Examination of the said *C. D.* taking his Receipt for the same. And the said *C. D.* is to be thence conveyed on in the same Manner to the said Parish or Town of *B.* there to be delivered to some Church-warden, Chapel-warden, or Overseer of the Poor, of the same Parish [Town or Place] to be there provided for according to Law, and you the said Church-wardens, Chapel-wardens, and Overseers of the Poor, are hereby required to receive the said Person, and provide for him as aforesaid. Given, &c.

*A Warrant to send a Vagabond begging to the House of Correction, and then to convey him to his Settlement in the same County.*

*to wit.* **T**O the Constable [Tithingman, or other Officer, as the Case may be] of the Parish [or Town] of *A.* in the County of *S.* to obey and convey.

And to the Governour, or Master of the House of Correction for the said County of *S.* at *G.* to receive and obey.

And also to all Constables, and other Officers, whom it may concern, to receive and convey.

And to the Church-wardens, Chapel-wardens, and Overseers of the Poor of the Parish [or Town or Place] of *B.* in the said County of *S.* or either of them to receive and obey.

WHEREAS *C. D.* was apprehended in the Parish [or Town] of *A.* in the said County of *S.* as a Rogue and Vagabond, wandering and begging there [or as the Case may otherwise be] and upon Examination of the said *C. D.* [and others, if the Case is so] taken before me upon Oath (which Examination is hereunto annexed) it doth appear, that the said *C. D.* is a Rogue and Vagabond, within the true Intent and Meaning of the Statute in that Case made and provided, and that his last legal Settlement is at the said Parish [or Town] of *B.* in the said County of *S.*

THESE



THESE are therefore to require you the said Constables [or other Officers] of the said Parish [or Town] of *A.* to convey the said *C. D.* to the said House of Correction at *G.* and there to deliver him to the said Governour or Master thereof, hereby requiring you the said Governour or Master to receive the said *C. D.* into your Custody, there to remain [ ‘ *until the next General or Quarter-Sessions of the Peace, to be holden in and for the said County of S. and to obey such Order as shall then and there be made touching the said C. D. in Pursuance of the said Statute, and in case no such Order be made*’ ] then to convey the said *C. D.* in the next direct Way to the said Parish [or Town] of *B.* and there to deliver him to some Church-warden, Chapel-warden, or Overseer of the Poor of the same Parish [or Town] to be there provided for according to Law, and you the said Church-wardens, Chapel-wardens, and Overseers of the Poor, are hereby required to receive the said Person, and provide for him as aforesaid. Given, &c.

N. B. If the Confinement is for a shorter Time, as it may be, then instead of the Words within the Crotchets above, it should be

‘ There to remain, and to be kept to hard Labour, until the

‘ Day

See P. 144  
161 of the  
Act.

‘ Day of                      next ensuing the  
 ‘ Date hereof, and after such Con-  
 ‘ finement, to convey the said *C. D.*  
 ‘ in the next direct Way, as above.

*A Warrant to send a Vagabond, first to  
 the House of Correction, and then to his  
 Settlement in a foreign County.*

to wit. **T**O the Constable [Tithing-  
 man, or other Officer of the  
 Parish [or Town] of *A.* in the  
 County of *S.* to obey and con-  
 vey.

And to the Governour or Mas-  
 ter of the House of Correction  
 for the said County of *S.* at *G.*  
 to receive, obey and convey.

And also to all Constables, and  
 other Officers, whom it may con-  
 cern, to receive and convey.

And to the Church-wardens,  
 Chapel-wardens, and Overseers of  
 the Poor of the Parish of *B.* in  
 the County of *S.* or either of  
 them to receive and obey.

WHEREAS *C. D.* was appre-  
 hended in the Parish [or Town] of  
*A.* in the said County of *S.* as a  
 Rogue and Vagabond, wandering  
 and begging [or as the Case may  
 be]

be] and upon Examination of the said *C. D.* [and others if the Case is so] taken before me upon Oath (which Examination is hereunto annexed) it doth appear that the said *C. D.* is a Rogue and Vagabond, within the true Intent and Meaning of the Statute in such Case made and provided, and that his last legal Settlement is at the said Parish [or Town] of *B.* in the said County of *H. K.*

THESE are therefore to require you the said Constable [or other Officer] of the said Parish or Town of *A.* to convey the said *C. D.* to the said House of Correction at *G.* and there to deliver him to the said Governour or Master thereof, hereby requiring you the said Governour or Master to receive the said *C. D.* into your Custody, there to remain [until the next General or Quarter Sessions of the Peace, as in the foregoing Warrant] if this Way is made use of, or if a shorter Continuance of the Confinement is chosen, then it must be there *to remain until the* Day of *next ensuing the Date hereof,* and after such Confinement, to convey the said *C. D.* to the Parish or Town of *that being* the first Parish [or Town] in the next Precinct through which he ought to pass in

in the direct Way to the said Parish or Town of B. to which he is to be sent, and to deliver him to the Constable or other Officer of such first Town [or Parish] in such next Precinct, together with this Pass, and the Duplicate of the Examination of the said C. D. taking his Receipt for the same; and the said C. D. is to be thence conveyed on in like Manner to the said Parish or Town of B. there to be delivered to some Church-warden, Chapel-warden, or Overseer of the Poor of the same Parish [Town or Place] to be there provided for according to Law, and you the said Church-wardens, Chapel-wardens, and Overseers of the Poor, are hereby required to receive the said Person, and provide for him as aforesaid. Given, &c.

*Ch. H. K.*  
*4/12/11*

F I N I S.



